



**Oyatsi v Kenya Post Office Savings Bank (Cause 979 of 2017)
[2022] KEELRC 13231 (KLR) (27 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13231 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 979 OF 2017
AN MWAURE, J
OCTOBER 27, 2022**

BETWEEN

URSULA SABINA OYATSI CLAIMANT

AND

KENYA POST OFFICE SAVINGS BANK RESPONDENT

JUDGMENT

1. The claimant/petitioner herein filed a statement of claim dated November 18, 2020. As per the claim the claimant's prayers were as hereunder:
 1. A declaration that by the memo dated March 4, 2020 and the subsequent conducts the respondent renewed the claimant's contract until May 31, 2023 under similar terms and conditions or until lawfully terminated.
 2. A declaration that the conducts of the respondent and the prevailing pandemic created legitimate expectation in the claimant that her contract had been renewed until May 31, 2022 or until lawfully terminated and any conduct to the contrary is a violation of the claimant's said right to legitimate expectation.
 3. A declaration that the notice dated June 4, 2020 unlawfully terminated the claimant's contract.
 4. An order of reinstatement or re-engagement to employment with back pay and without loss of any benefits.
 5. In the alternative, compensation equivalent to the claimant's 12 months gross salary
 6. Costs of the claim
 7. Interest on 5 and 6 from the date of judgment until payment in full.
 8. Any other or further relief that the court may deem fit to award to meet the ends of justice.



2. The respondent's response was filed on December 18, 2020 and its witness statement by Josphine Moraa Abuya.
3. The respondent prays the claimants claim be dismissed with costs to the respondent and any other relief this honourable court may deem fit to grant.
4. The claimant had also filed a petition dated October 31, 2016 and prayed for the following:
 1. This application be certified as urgent and heard *ex parte* in the first instance.
 2. That pending inter parties hearing and determination of this application, there be a conservatory order preserving the *status quo* and restraining the respondent from going ahead on November 1, 2016 or on any date thereafter to conclude the restructuring process by filling all and/or any of the top management positions with prospective employees who have been shortlisted, interviewed and selected to fill those positions including the position of the applicant.
 3. That a temporary injunction be granted pending the hearing and determination of the present application inter parties, restraining the respondent by itself or its agents, or servants or howsoever from enforcing the letter dated October 28, 2016 terminating the petitioner's contract of employment with the respondent with effect from November 1, 2016.
 4. That a temporary injunction be granted pending the hearing and determination of the present application inter parties restraining the respondent by itself, its agents, servants or howsoever from interfering with the petitioner's contract of employment with the respondent entered into in June 1, 2014.
 5. That upon inter parties hearing and determination of this application but pending hearing and determination of the petition, there be a conservatory order preserving the *status quo* and restraining the respondent from going ahead on November 1, 2016 to fill all and/or any of the top management positions with prospective employees who have been shortlisted, interviewed and selected to fill those positions including the position of the applicant.
 6. That upon inter parties hearing and determination of this application but pending their and determination of the petition, there be a conservatory order maintaining the status quo and restraining the respondent from enforcing the purported termination of the petitioner's subsisting contract of employment which is supposed to run until May 31, 2017.
 7. Any other or further relief that the honourable court may deem just and expedient to grant to meet the ends of justice.
 8. Costs of the application to be provided for.
5. The court has decided that it will adjudicate on all issues raised in the matters in total.
6. The prayers in the statement of claim were dealt with at the arbitration proceedings and an award was given on May 18, 2021. This was a final award and so any matter that would be reopened which were clearly dealt with at the arbitration proceedings would be *res judicata* and this court not wish to engage in a futile exercise to handle matters that were already dealt with by the arbitral tribunal. The parties voluntarily subjected themselves to the jurisdiction of the arbitration tribunal and so are well bound to adhere to the award delivered by the arbitration tribunal. The court will not therefore address itself on the prayers in the statement of claim of November 18, 2020. It is *res judicata* and is final.



7. As relates to the applications dated May 29, 2017 and July 7, 2017 are all overtaken by events and so the court will find no purpose will be served to deal with them.
8. As for the petition dated October 31, 2016, the court finds that the arbitration award referred to this petition No 133/2016 which was consolidated with the claim cause No 979/2017. The two were therefore merged into one and the same suit.
9. The court does not find any value into going into all the details of the cause No 979/2017 and petition 133/2016. The prayers in the 2016 petition were already summarised herein before. They are all overtaken by events and the orders sought are all redundant and so the court will not interrogate the merits or demerits of the said petition thereon.
10. Further, the claimant's contracts entered into on June 1, 2014 terminated by effluxion of time. The prayers in the petition No 133/2016 are not capable of being granted as already observed.
11. As for the arbitration proceedings before the arbitration tribunal the claimant actually applied to this honourable court to authorise the Chartered Institute of Arbitrators to appoint an arbitrator to determine the employment dispute that arose between the claimant and the respondent under the service contract. The claimant *inter alia* produced the pleadings in ELRC 133 of 2016 as her exhibit No 2 and ELRC 979 of 2017 as her exhibit No 3.
12. The arbitration tribunal delivered its award in Nairobi on March 18, 2021 and held that there was no contract of employment between the parties after May 31, 2020. Clearly this was a continuous story from 2016 when the claimant received her first letter of termination and filed the petition 133/2016 and thereafter was granted conservatory orders. The orders were extended time and again until the contract expired by effluxion of time. The contract between 2017 to 2020 expired by effluxion of time and the arbitration tribunal as earlier noted held that there was no other contract after May 2020.
13. The court has considered all the pleadings and the oral submissions by the petitioner's counsel and the respondents counsel on June 13, 2022.
14. The respondent's counsel submissions are that both petition 133/2016 and cause 979/2017 have been overtaken by events. The claimants counsel however in his submissions informed the court that the arbitration tribunal did not deal with the matters in the petition 133/2016.
15. The court in all fairness finds the arbitration tribunal covered the issues which had been raised from 2016 to 2020 by the petitioner in the various applications and suits. The parties voluntarily subjected themselves to the jurisdiction of arbitral tribunal and the tribunal made a final award. The court finds it will not be legally prudent or necessary to determine matters that have already been heard and determined by an arbitral tribunal.
16. To refer the provisions of section 10 of [Arbitration Act](#) states

“Except as provided in this Act no court shall intervene in matters governed by this Act.”

Clearly [Arbitration Act](#) was meant to provide a quicker way of settling disputes which is distinct from the court process (see [Nyotu Agrovat limited vs Airtel Networks Kenya Limited Chartered Institute of Arbitrators Kenya Branch as Interested Party](#)) SCK petition No 12 of 2016 (2019) eKLR. Further in the above authority it was held that model law also advocates for limiting and clearly defining court involvement. This reasoning is informed by the fact that parties to an arbitration agreement make a conscious decision to exclude court jurisdiction and prefer the finality and expediency of the arbitral process”.



17. In other words parties who subject themselves to the arbitration tribunal proceedings and then still expect court to determine part or all of their issues are like the old saying “you cannot have your cake and eat it.”
 18. The court is satisfied the cause No 979/2017 as consolidated with petition No 133/2016 are both settled one by effluxion of time and secondly because the parties subjected the dispute to the arbitral tribunal and a final award was delivered.
 19. There comes a time when litigation has to come to an end and in this case the court finds the claims raised hereto in form of claim, petition and even notice of motions dated July 7, 2017 and May 29, 2017 are all overtaken by events. The only fair thing is to mark all the above as settled and all files closed.
 20. Subsequently each party will bear their own costs in all the suits and applications and files closed.
- Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 27TH OCTOBER, 2022.

ANNA NGIBUINI MWAURE

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 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 a just, expeditious, proportionate and affordable resolution of civil disputes.

ANNA NGIBUINI MWAURE

JUDGE

