



Cherutich v Rural Electrification & Renewable Energy Corporation (Cause 12 of 2019) [2022] KEELRC 12984 (KLR) (26 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 12984 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 12 OF 2019
S RADIDO, J
OCTOBER 26, 2022**

BETWEEN

CHARLES KOIMUR CHERUTICH CLAIMANT

AND

**RURAL ELECTRIFICATION & RENEWABLE ENERGY
CORPORATION RESPONDENT**

JUDGMENT

1. Charles Koimur Cherutich (the Claimant) sued the Rural Electrification Authority (now the Rural Electrification & Renewal Energy Corporation) (the Respondent), and he stated the Issues in Dispute as follows:
 - i. Unfair and unlawful termination of services contrary to the provisions of sections 35, 37, 41, 43, 44, 45, 46, 47, 49 and 51 of the *Employment Act*, cap 226 of the Laws of Kenya.
 - ii. Unfair labour practice contrary to the provisions of Article 41(1) of *the Constitution* of Kenya.
2. The Respondent filed a Response on 29 March 2019, and the Claimant filed a Reply to the Response on 7 May 2019.
3. The parties filed Agreed Issues on 13 July 2021, and the Cause was heard on 21 June 2022. The Claimant and a Human Resource Officer with the Respondent testified.
4. The Claimant filed his submissions on 20 July 2022, and the Respondent on 29 August 2022.
5. The Court has considered the pleadings, evidence, and submissions and condensed the Issues for adjudication as examined hereunder.



Unfair labour practices

6. The first question the Claimant posed concerned unfair labour practice(s).
7. The Court has perused the Memorandum of Claim and has not discerned any clear nexus between the facts pleaded and the assertion of unfair labour practice as a distinct cause of action.
8. In the submissions, the Claimant appeared to contend that being on half salary, failure to give notice of termination of employment or the reasons thereof, denial of access to the position of Legal Clerk and the circumstances of interdiction amounted to unfair labour practices.
9. The Respondent's Human Resources Policy Manual provided for interdiction on half salary, and the Court sees no unfair labour practice in the decision.
10. The Court will address the other elements under the following subtitles.

Nature of contract

Warden

11. The second issue identified by the parties was whether the Claimant's contract/employment as a security warden was changed to permanent and pensionable terms.
12. It is not in dispute that the Claimant had been engaged by the Respondent as a store clerk in 2012 until around 31 August 2017, when he was offered a 6-month fixed-term contract to serve as a Warden.
13. On 29 March 2018, the Respondent's Chief Executive Officer notified the Claimant that the contract had been extended for 1 year. However, the letter also indicated that the contract would lapse on 30 June 2018.
14. The Respondent's witness testimony was that the extension was for 3 months, and the contract was not renewed when it lapsed on 30 June 2018.
15. The witness was not cross-examined on this aspect of his testimony or the apparent inconsistency in the aforesaid letter dated 29 March 2018.
16. The Court will find that the Claimant's contract to serve as a Warden lapsed by effluxion of time.

Legal Clerk

17. The third issue raised by the parties was whether the Respondent offered the Claimant an appointment as a Legal Clerk.
18. To advance the assertion that he was offered and accepted the position of a Legal Clerk, the Claimant produced a copy of a letter dated 16 April 2018, offering him the position on permanent and pensionable terms.
19. The Claimant named the Respondent's officers, who were present when the offer letter was delivered to him.
20. The said officers were not called to testify, nor was the failure explained.
21. The Claimant also produced a letter dated 30 April 2018 accepting the offer and an employment contract signed on an even date.



22. The Claimant testified that when he reported to work on 7 May 2018, one of the Respondent's Managers (named) took the offer letter and advised him to wait for the conclusion of the criminal case before reporting.
23. The Respondent admitted that the Claimant applied for the position of Legal Clerk, which had been advertised in November 2017, was interviewed, and proposed for the position but was never formally offered the position despite a letter of offer being prepared because he had a pending criminal case.
24. The Respondent contended that it was suspicious how the Claimant obtained a copy of the letter.
25. It produced an extract of a delivery register to show that the offer letter was never delivered to the Claimant.
26. The Court has the word of the Claimant against the Respondent's witness. No evidence was placed before the Court that the Claimant was informed formally that the offer letter had been withheld because of the pending criminal case. The Managers the Claimant named as having delivered the offer letter and or taken back the letter of the offer were not called to testify and the failure to call her was not explained.
27. The criminal case facing the Claimant had not yet been concluded by the time of the hearing.
28. The Court will give the Claimant the benefit of the doubt and find that he was offered the position of Legal Clerk.

Unfair termination of employment

29. The Court has already found that the Claimant's contract as a Stores Clerk expired over time.
30. The question, therefore, is whether the contract to serve as a Legal Clerk was unfairly terminated.
31. A party alleging unfair termination of employment is required by section 47(5) of the *Employment Act*, 2007, to prove at the first instance that an unfair termination of employment occurred before the Respondent is called upon to justify the decision to terminate.
32. The Claimant did not lead any evidence to suggest that the Respondent terminated his contract to serve as a Legal Clerk or that the Respondent had breached a fundamental term of the contract to serve as a Legal Clerk to assert constructive dismissal.
33. The Claimant's evidence was that he was informed to wait for the conclusion of the criminal case, which had not been concluded by the time he moved the Court. As it is, there was no agreement as to when the contract would commence. The contract merely provided that:

Your employment/appointment to the post will commence w.e.f the date of reporting for deployment or as otherwise specified.
34. The Claimant moved the Court prematurely.

Conclusion and Orders

35. From the foregoing, the Court finds no merit in the Cause, and it is dismissed with costs.

DELIVERED VIRTUALLY FROM VOI, DATED AND SIGNED ON THIS 26TH DAY OF OCTOBER 2022.

**RADIDO STEPHEN, MCIARB
JUDGE**



Appearances

For Claimant ROW Advocates LLP

For Respondent Siganga & Co. Advocates

Court Assistant Chrispo Aura

