



**Mutisya v Machakos County Assembly Service Board (Cause 4 of 2018)
[2022] KEELRC 12953 (KLR) (14 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12953 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE 4 OF 2018
MA ONYANGO, J
OCTOBER 14, 2022
AS CONSOLIDATED WITH 106 OTHERS**

BETWEEN

NELLY ITUMBI MUTISYA CLAIMANT

AND

THE MACHAKOS COUNTY ASSEMBLY SERVICE BOARD RESPONDENT

JUDGMENT

1. The Judgment herein is in respect of 107 claims. On January 17, 2020 the parties recorded a consent in Court for consolidation of Claims Nos 3, 4, 6 – 58, 61, 63 – 102 and 104 – 108 all of 2018 and selected Cause No. 4 of 2018 as a test suit for purposes of determination of liability. The issue of quantum was to be proved on a case by case basis as per each cluster.
2. Further on February 27, 2020, the parties entered and filed another consent vide Machakos ELRC Misc 1 of 2020 to transfer Machakos Chief Magistrates Causes No 597, 598, 599, 600, 601 & 602 all of 2018 for hearing and determination by this Court and also settled on Cause No 4 of 2018 as the test suit. The transferred matters were subsequently registered in the Employment and Labour Relations Court under Machakos ELRC Cause No 6, 7, 8, 9, 10 and 11 of 2020 respectively.

Background

3. The Claimants were all employed by the Respondent as ward staff vide contracts dated September 30, 2013.
4. The appointments were in positions of Personal Assistants, Secretaries and Messengers respectively following the advertisement and successful interviews to fill the said positions. The monthly salaries were Kshs 25,000/-, Kshs 17,000/- and Kshs 13,000/- respectively for personal assistants, secretaries and messengers



5. Upon receipt of their contracts the Respondent deployed the claimants in the respective ward offices scattered all over the 40 wards within Machakos County.
6. The Claimants averred that their offices were created, funded and furnished by the Respondent. Further that their duties and responsibilities were assigned by the Respondent, who was also responsible for the payment of their salaries.
7. The Claimants further averred that the Respondent was responsible for payment of their gratuity and deduction and remittance of their respective statutory deductions as evidenced by the sample NHIF and NSSF statements as well as acknowledgement letters prepared to the two (2) bodies as filed in Court.
8. The Claimants averred that all their grievances and concerns during the subsistence of their employment were addressed by the Respondent and that their ultimate termination was communicated by the Respondent.
9. They aver that on November 5, 2013 the Respondent without notice unlawfully, unfairly and unilaterally revoked the Claimants letters of appointment citing a decision by the County Assembly Service Board sitting on November 4, 2013 that the ward staff be employed by the Members of the County Assembly and that the Respondent would facilitate the signing of the contracts between the Claimants and the individual Members of the County Assembly.
10. The Claimants were however not issued with new contracts and they continued to offer their services on the terms in the original letters of appointment until June 2017 when they received a short message (sms) from the Respondent calling them for a meeting.
11. On June 20, 2017 a meeting took place between the Claimants and the Machakos County Assembly where the Claimants were verbally instructed to continue working for the Respondent until the expiry of the Assembly's lifespan being August 8, 2017.
12. The Claimants continued working and their salaries for the months of August and September, 2017 were duly paid by the Respondent.
13. On October 18, 2017 the Claimants received communication from the Respondent's communication section to hand over to the current members of County Assembly on or before October 23, 2017.
14. The Claimants maintained that the Respondent remained silent about their salary arrears for the period from October 2017 to February 2018 prompting their letter dated February 16, 2018 demanding the payments.
15. Vide its letter dated March 26, 2018, the Respondent denied any arrears owed to the Claimants insisting that their contracts expired on August 8, 2017 a fact that was vehemently denied by the Claimants.
16. In the instant suits, the Claimants seek the following remedies:-
 - a. A declaration that the terms of contract of service between the parties were permanent.
 - b. Salary Arrears
 - c. House Allowance
 - d. Commuter Allowance



- e. Annual Leave
- f. Overtime
- g. Water
- h. Gratuity
- i. Damages for unfair termination
- j. Two months' pay in lieu of notice
- k. NHIF and NSSF refund
- l. Certificate of Service
- m. Any other relief this Court deems fit and just to grant.

Respondent's Response

- 17. The Respondent denied that it employed the Claimants as alleged and averred that the appointment letters were erroneously issued by the Members of the County Assembly, which appointments were not provided for in the county structure forcing it to terminate the said contracts.
- 18. The Respondent states that the Claimants have no claim as against it and urged this Court to find the same devoid of merit and to dismiss the same with costs to the Respondent.

Evidence

- 19. At the hearing the Claimants called one witness and the Respondent called two (2) witnesses.

Claimants' Case

- 20. CW1, Nelly Itumbi Mutisya adopted her witness statement dated February 16, 2021 as her evidence in chief. She further adopted the list and bundle of documents as exhibits as part of her evidence in this case.
- 21. CW1 testified that she saw an advertisement outside the chief administration offices notice board for the position of personal assistants, secretaries and messengers.
- 22. She testified that she applied and was shortlisted and interviewed on September 23, 2013 for the position of secretary. That at the end of the day she was notified that she had qualified and commenced duties on October 1, 2013.
- 23. CW1 testified that her interview was done by a panel consisting of the area Member of County Assembly together with officers from the Machakos County Assembly Service Board. She was informed of her terms and conditions of service by Mr Mutisya the Respondent's Human Resource Manager.
- 24. CW1 denied that she was an employee of the area MCA as contended by the Respondent insisting that her roles and duties were given by the Respondent and not the MCA.
- 25. She testified that she received the letter of appointment on November 4, 2013 which she signed in acknowledgement of receipt. The letter was done under the letterhead of Machakos County Assembly, Office of the Speaker.



26. CW1 further testified that she subsequently received a letter of revocation dated November 5, 2013 authored by the Human Resource, County Assembly. She sought clarification on the revocation letter from the HR and was informed that new letters were to be issued and that they should continue working as the processing of the letters was underway.
27. CW1 testified that they continued working for the Respondent until February 2018. She testified that the appointment letter issued stated that her appointment was to run until expiry of the term of the County Assembly.
28. CW1 testified that there were elections in October 2017 after which another government took over. She further testified that she did not receive any salary from November 2017 to February 2018 despite working for the Respondent.
29. CW1 testified that during the period she was at work she received instructions from and was supervised by the Office of the Speaker of the County Assembly. That she prepared reports and handed over to the Clerk of the Assembly. She further stated that the Claimants' salaries were paid by Machokos County Assembly Service Board. The Board also made remittances of NHIF and NSSF deductions. It is on this basis that CW1 maintained that she was an employee of the Respondent.
30. CW1 testified that the salary paid was basic and not consolidated. She further testified that they were never paid house allowance, commuter allowance or gratuity and therefore are entitled to the same.
31. She urged this Court to find the claims merited and to allow them in terms of the reliefs sought therein.
32. On cross examination CW1 averred that the terms of service between her and the Respondent were permanent and not contractual. She agreed that the letter of appointment describes her engagement as contractual and that the term was to expire with the term of the County Assembly.
33. CW1 admitted that there were repeat elections in October 2017.
34. CW1 also agreed that she received the letter of revocation from the Clerk of the Assembly but maintained that she challenged the revocation.
35. She insisted that she was not an employee of the MCA as she was not identified by the MCA and was never issued with a contract between her and the area MCA.
36. She reiterated that she was interviewed by two (2) members of the County Assembly Service Board in the company of the area MCA after which she was issued with an appointment letter by the Clerk of the County Assembly stipulating her terms of service.
37. She further stated that she was verbally informed that her duties involved filing of documents, distribution of letters and cleaning of the office. She stated that she received instructions directly from the Clerk of the Assembly and that the instructions were usually verbal by way of phone calls or through other staff in the office. CW1 made reference to an officer by the name 'Lillian' who would give the Claimants instructions via SMS and telephone calls.
38. CW1 testified that upon the expiry of the term of service no letter of extension of the term was issued to her despite continuing to work until February 2018.
39. CW1 testified that there was no provision of water at the offices forcing her to purchase water at the cost of Kshs.50/- per day for a period of 64 months. She did not produce any receipt to support this claim. She denied that there is provision of piped water at the office.



40. On re-examination CW1 stated that her duties as contained in exhibit NIM 2 were signed by the Respondent's Human Resource Management. She further stated that the Respondent's organizational structure was never brought to her attention while she was the Respondent's employment. She further reiterated that the revoked letter from the County Assembly Service Board was never replaced.

Respondent's Case

41. RW1, Felix Gitari Mbiuki, the Clerk of the County Assembly of Machakos relied on his witness statement dated July 29, 2020 as his evidence in chief. He also relied on the list and bundle of documents filed alongside the Response as exhibits in this matter.
42. RW1 outlined the structure of the County Assembly which has 3 sets of officers, the Members of County Assembly both nominated and elected, the permanent and pensionable members of staff whose main job is to facilitate the members of the Assembly both at ward and Assembly level.
43. He testified that the government has allowed the Members of County Assembly to engage three members of staff to assist them in their operations and that as a way of ensuring accountability the remuneration for such staff was paid through the County Assembly Service Board. He testified that this cannot be a basis to insist on an employment relationship between the Claimants and the Respondent.
44. RW1 further testified that all the Claimants were in fact employees of the respective Members of County Assembly and that the appointment letters issued on September 30, 2013 were revoked on November 5, 2013. He testified that the Respondent clarified the position regarding the employment of the Claimants.
45. RW1 testified that the decision to revoke the appointment letters followed advice from the Commission on Revenue Allocation which budgets for the remuneration of staff attached to the MCAs. RW1 testified that he was present at the meeting and that it was decided that the positions of Personal Assistant, Secretary and Messenger would be employees of the MCAs.
46. RW1 testified that from the communication to the Claimants it was clear that their term would come to an end with the tenure of the Members of County Assembly on August 8, 2017.
47. RW1 denied that the staff were allocated duties by the County Assembly as contended by CW1 insisting that the duties performed were as directed by the individual MCA. He added that discipline was also conducted by the MCA as is evident from Defence Exhibits Number 8 to 21.
48. He further stated that both the letters of appointment and the letters of revocation of appointment were clear that the engagement of the Claimants was contractual and that the term would lapse by August 8, 2017. He testified that at the lapse of the employment contract all MCAs staff were paid their gratuity.
49. RW1 testified that there was no advertisement to fill any position in the County Assembly and therefore there was no recruitment by the Respondent.
50. On the issue of leave, RW1 maintained that every individual MCA was to arrange for leave for their staff. He further testified that no staff worked overtime.
51. RW1 further testified that house allowance was not payable as the Claimants received a consolidated salary. On the issue of water allowance, RW1 stated that the Assembly give a standing imprest of Kshs.30,000/- which paid rent while the balance was used in the day to day running of the office such



- as payment of water, electricity and transport. That the Claimants are not entitled to water allowance as pleaded.
52. RW1 stated that gratuity was paid by the Respondent only as a facilitating entity. He further stated that the Respondent cannot be tasked with the duty of issuing Certificates of Service as the Claimants were not its employees.
 53. On cross examination RW1 stated that the letters of appointment were issued by his office after the Members of County Assembly had identified their members of staff. He testified that the letters were subsequently revoked on November 5, 2013 and as a result the Claimants' were not employees of the Respondent. He stated that the Claimants were notified of the same.
 54. On further cross examination RW1 stated that he was not aware if the MCAs prepared and issued appointment letters to the Claimants.
 55. RW1 testified that the various introduction letters to NSSF and Banks emanated from the County Assembly for the reason that the office of the Member of County Assembly is not established by the County Assembly Public Service Board and the position of ward staff was not established by the Board.
 56. On re-examination RW1 stated that the revocation of the appointment letters did not terminate the Claimants employment. It only gave a clarification that they were employed by the individual MCAs and not the Respondent.
 57. He further stated that all the Claimants were paid salaries for the period worked and that they have no claim for unpaid salaries.
 58. He testified that all payments made by the County Assembly Service Board as well as communication to the various statutory bodies was made by the assembly in the capacity of an agent and not an employer.
 59. RW2 Joseph Mutisya Laban, the Machakos County Deputy clerk in Charge of Administration adopted his witness statement dated July 29, 2020 as his evidence in chief. He further adopted and relied on the list and bundle of documents filed together with the response as exhibits in this suit.
 60. RW2 testified that there was no formal extension of the Claimants contracts that expired on August 8, 2017. He further stated that the claimants were employed directly by the individual MCAs.
 61. RW2 testified that he authored the revocation letter dated November 5, 2013 and that no other appointment letters were issued to the Claimants subsequent to the revocation. He testified that all the Claimants worked until the expiry of their contracts.
 62. He testified that the Claimants are not entitled to the reliefs sought in their individual claims.
 63. On cross examination RW2 stated that the board was acting as an agent of the MCAs despite the fact that the letter of appointment did not refer to the board as an agent. He maintained that the revocation letter was clear.
 64. RW2 testified that none of the claimants were terminated. He denied that the Claimants worked until February 2018 noting that by then the said offices were occupied by new members of staff.

Submissions by the Parties

65. In their submissions the Claimants maintained that they were employed by the Respondent and that the Members of county Assembly have no legal mandate to employ county assembly staff.



66. The Claimants relied on the provisions of Gazette Notice No. 2886 of April 29, 2016 – The Machakos County Assembly Service Board (Ward Office) Guideline, 2015 in particular Regulations 2 and 18(1). The Regulations provide as follows: –
2. Citation.
These Guidelines may be cited as the Machakos County Assembly Service (Ward Offices) Guidelines, 2015.
 18. Recruitment of staff
 1. A Member of the County Assembly shall, on behalf of the Board, initiate recruitment of ward office staff on terms of employment and salary scales determined by the Board.
67. For emphasis the Claimants relied on the provisions of Sections 12 and 13 of the *County Governments Act, 2012* and the case of *Laban Awando Kanyo v Susan Larson T/A Utamaduni Craft Center* (2013) eKLR.
68. The Claimants submit that the Respondent’s claim that they were employed by the individual MCAs is a ploy to avoid employee obligations and should be disregarded by this Court.
69. They submitted that the alleged revocation of the employment contracts was unlawful, null and void and urged this Court to come to a similar finding. They maintained that due to the continuous service their engagement with the Respondent was deemed to have been an open ended oral contract with no expiry date. To fortify this argument the Claimants cited the provisions of Section 37(1)(b) and 37(3) of the *Employment Act, 2007*.
70. The Claimants urged this Court to make a finding that they were indeed under the Respondent’s employment for an indefinite period.
71. On the issue of quantum, the Claimants maintained that having proved their case against the Respondent they are entitled to the reliefs sought in the individual claims.
72. It is further submitted that the Respondent has failed to discharge the burden of approving or disapproving the alleged terms of engagement as required under the provisions of sections 10 and 74 of the *Employment Act, 2007* and therefore this Court is bound to consider the Claimants’ averments on the same as truth. To buttress this argument the Claimants relied on the case of *Stephen Mbuvi Kathoka v Parbat Siyan Construction Co Ltd* (2013) eKLR, *Abigal Jekosgei Yator v China Hanan International Co Ltd* (2018) eKLR and *Michael Aloyo Ulage v Gitonga Stanley* (2013) eKLR where the Courts held that the employer has the burden of proving and/or disapproving terms of engagement failing which the employee’s word as against the employer shall be considered as final.
73. On payment of salary arrears, the Claimants submitted that in the absence of any proof of payment of such salaries they are entitled to compensation under this head by dint of the provisions of Sections 10(7) and 74 of the *Employment Act, 2007*.
74. The Claimants further submitted that the salary received from the Respondent was not a consolidated salary as contended by the Respondent but was a basic salary and they are therefore entitled to payment of allowances as pleaded.
75. The Claimants urged this Court to resolve the issues in contention in favour of the Claimants relying on the decisions in *Stephen Mbuvi Kathoka* (*supra*) and *Joshua Lihanda v Outdoor Occasions Ltd* (2014) eKLR.



76. The Claimants further submitted that in the absence of evidence from the Respondent, they worked continuously for the Respondent until February 26, 2018 when the Respondent unlawfully and unfairly terminated their employment contrary to the mandatory provisions of Sections 41, 43 and 45 of the Employment Act, 2007. For emphasis the Claimants cited the case of Pauline Wangechi Warui v Safaricom Limited (2020) eKLR where the Court awarded the Claimant maximum compensation for unlawful and unfair termination.
77. In the circumstances the Claimants urged this Court to find all their individual claims with merit and to allow them as prayed. For emphasis the Claimant relied on the case of Josephine M. Akinyi v Farbiyo Mohammed (2013) eKLR.
78. The Claimants further submitted that they are each entitled to the issuance of a certificate of service for the duration worked for the Respondent. To fortify this argument the Claimants rely on the provisions of section 51 of the Employment Act, 2007 and the case of Transport Workers Union v African Safaris Diani Venture (2013) eKLR where the Court held that a Certificate of Service is a statutory entitlement and an employer has a duty to issue the same to an employee regardless of the nature and circumstances of separation with the employer.

Respondent's Submissions

79. In its submissions the Respondent maintains that there was no employer employee relationship between itself and the Claimants. It maintained that all the Claimants were in fact employees of the individual Members of County Assembly and that the appointment letters were issued owing to an error during the transition to County Governments in 2013, which error was rectified through the revocation issued on November 5, 2013.
80. It is further submitted that each individual Member of County Assembly had the power to appoint and terminate at will the services of their personal employees as was evidenced by the termination letter dated August 31, 2015 from one Willy Kasimu to his personal staff.
81. The Respondent maintained that the Claims by the Claimants are an afterthought given that they never raised the issues during the subsistence of their employment with the MCAs.
82. The Respondent further submitted that no evidence was adduced to support the Claimants' assertion that their employment contracts were extended given that the same were fixed term contracts. To buttress this argument the Respondent relied on the case of Stephen M. Kitbeka v Kevita International Limited (2018) eKLR and Jonathan M. Waiganjo v Unga Group Limited (2018) eKLR on fixed term contracts.
83. The Respondent further submits that the Claimants have failed to provide documentation in support of each of their claims and as such the claims remain unsupported by evidence. It maintained that the Claimants failed to compel the respective Members of County Assembly to produce relevant documentation to prove their case such as leave and overtime records being the appointing authority. For emphasis the Respondent cites the case of Joshua Rodney Marimbah v Kenya Revenue Authority (2017) eKLR.
84. The Respondent further submitted that the Claimants have failed to establish a case against it to warrant the grant of the reliefs sought in the individual claims and urged this Court to dismiss them in the claims entirety with costs to the Respondent.



Analysis and Determination

85. I have considered the pleadings, the evidence and submissions together with authorities relied upon by the parties. The issues arising for determination are:
- i. Whether an employer/employee relationship existed between the Claimants and the Respondent herein;
 - ii. Whether or not the claimants were on fixed term contracts: and
 - iii. Whether the Claimants are entitled to the reliefs sought.

Whether an employer/employee relationship existed between the Claimants and the Respondent

86. The Claimants maintain that they were all employed by the respondent. They relied on appointment letters issued by the Respondent, signed by the Clerk to the County Assembly of Machakos; a fact that was not denied by the Respondent.
87. The Claimants maintained that they drew instructions from the Respondent and not individual Members of County Assembly and that their salaries and grievances were handled directly by the Respondent.
88. In its defence the Respondent maintains that the appointment letters were issued in error as the ward staff were meant to be employed by the individual Members of County Assembly and not by the Respondent.
89. The Respondent maintains that the error was corrected following several meetings at which it was resolved to revoke the letters of appointment. This was done vide the letters dated 5th November 2013.
90. The Respondent maintained that some of those roles such as payment of salaries was necessitated by the fact that the salaries were paid by the Commission on Revenue Allocation and that it only gave the salaries to avert a situation where the respective MCA would fail to pay salaries. The Respondent maintained that its actions were that of an agent and should not be construed as the employer of the Claimants. The Respondents further contended that the ward positions did not exist in its organogram.
91. RW1 and RW2 in evidence admitted that the Respondent the appointment letters to the Claimants and paid salaries and gratuity to the Claimants.
92. No fresh contracts and/or letters of appointment were ever issued to the Claimants to indicate change of the terms of engagement. Further the Claimants continued working in the same capacities of Personal Assistants, Secretaries and Messengers after revocation of their letters. They were paid salaries by the Respondent.
93. No evidence has been adduced by the Respondent to support its assertion that the Claimants were in-fact employees of the individual members of County Assembly.
94. Section 2 of the *Employment Act, 2007* defines “employee” and “employer” as follows: -
- “employee” means a person employed for wages or a salary and includes an apprentice and indentured learner.



“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

95. In this case the Respondent employed the Claimants by issuing to them letters of appointment. Even though the letters were revoked, they continued working in the same positions and terms of the letters of appointment. No new letters of appointment were issued by the MCAs whom the Respondent insists were the employers of the Claimants.
96. The MCAs do not fit under the definition of the employer in the *Employment Act*. There is no evidence that the MCAs supervised the Claimants or gave them instructions on their day to day work. To the contrary, it was the county secretary who supervised the Claimants and whom the Claimants reported to as stated by the CW1.
97. Further, it is the Respondent who paid salaries and made statutory deductions from the salaries of the Claimants.
98. The Respondent having allowed the Claimants to work under the revoked contract and having paid the salaries, gratuity and made statutory deductions in respect of the Claimants, cannot run away from the responsibility of an employer.
99. From the foregoing, I find that the Claimants were employees of the Respondent assigned to the Respondents’ respective ward offices.

Whether or not the Claimants were engaged on fixed term contracts

100. RW1 and RW2 in evidence stated that the Claimants were engaged on fixed term contracts and that the term of the contracts were to lapse upon the expiry of the current assembly. It is on this basis that the Respondent maintained that the employment contracts automatically lapsed in August 2017 and that it had been generous to pay the Claimants salaries to the months of September and October 2017.
101. The Claimants on their part maintained that they continued to offer services to the Respondent thus their employment terms were converted to permanent and pensionable contracts.
102. The law on fixed term contracts is well settled in this Country. Fixed term contracts have a definite start date and a definite or ascertainable end date in line with the provisions of Section 10(3)(c) of the *Employment Act, 2007*.
103. In this case the letter of appointment dated September 30, 2013 contains a start date. It however did not give a fixed date for its expiry. The letter states that the same shall expire upon expiry of the current assembly.
104. “Expiry of the current assembly” can mean many different things. It can be on the date of elections or the day after elections. It can also mean the date of swearing in of MCAs or the date on which the old staff hand over to new staff after going through a selection process similar to that which the Claimants went through. All these interpretations would lead to different dates.
105. The situation is further complicated by the fact that the Claimants were paid salary up to October 2017. Further, there is no evidence that the Claimants were ever notified that they should vacate office at the end of October or any other date. The Respondent has not adduced evidence on when the Claimant were replaced or controverted the Claimants’ evidence that they worked up to February 2018.



106. In view of the fact that the appointments did not have a definite expiry date, it was imperative that the Respondent notified the Claimants of the actual expiry date of their appointments. Having failed to do so, I have no reason to disagree with the Claimants that they worked up to February 2018.

Whether the Claimants are entitled to the reliefs sought

i. Salary Arrears

107. As held above, the Claimants worked until February 2018. They are therefore awarded salary arrears from November 2017 to February 2018.

ii. House Allowance

108. The Respondent have submitted that the Claimants received a consolidated salary and are therefore not entitled to house allowance as the same was already included in their remuneration.
109. The Claimants, through CW1 maintained that they were paid basic salary and not consolidated salary insisting that they are entitled to house allowance.
110. I have perused the sample pay slips attached to the Claimants' list of documents dated February 16, 2021 which reflects that the Claimants received a gross pay. "Gross income" is defined in *Blacks Law Dictionary* 10th Edition as "total income from all sources before deductions, exemptions or other tax deductions".
111. This therefore means that the salary paid to the Claimants was the total pay. The same would therefore be inclusive of house allowance. The prayer for house allowance therefore fails.

iii. Commuter Allowance, Overtime and Water Allowance

112. Compensation under the above heads fail for want of proof. No evidence was adduced to prove that the terms of contract of the Claimants included any of these benefits.

iv. Annual Leave

113. In the absence of evidence by the Respondent that the Claimants took leave, they are entitled to leave for the period worked as provided in their contracts.

v. Damages for unfair termination

114. The letters of appointment of the Claimant's indicated that their contracts would "end at expiry of the current assembly." This mean that the Claimants were aware that their contracts would expire soon after elections of 2017, even though no specific date was mentioned in the appointment letters. The fact that they stayed in office until February 2018 does not change the nature of their employment from fixed contract to open ended.
115. I find that the Claimants are not entitled to compensation for unfair termination as their contracts came to an end as set out in their letters of appointment.
116. All that they were entitled to was reasonable notice in view of the fact that their contracts did not have a specific end date and that they worked for several months after expiry of the term of the Assembly under which they were employed. The prayer for compensation must therefore fail.
117. From the foregoing I make the claimants the following orders:



- i. The prayers in respect of commuter allowance, overtime, and water were not proved and therefore fail.
- ii. The prayer for house allowance also fails as the Claimants were paid a gross salary.
- iii. Gratuity is only payable for the months which were not paid for by the Respondent, the Claimants are awarded gratuity for the rest of the period. The Claimants are therefore awarded gratuity for the months of November and December 2017 and January and February 2018.
- iv. The Claimants are not entitled to refund of NSSF and NHIF. Any outstanding payments with respect of NSSF and NHIF should be reported to the respective bodies to collect from the Respondent as both have machinery for collection under the Acts that establish the funds.
- v. The Claimants are awarded pay in lieu of leave as provided in the letters of appointment.
- vi. Notice
As already stated above the Claimants are entitled to reasonable notice as their contracts did not provide for an end date.
- vii. In view of the fact that the letter of appointment did not provide for notice, there is no justification of two months' notice as prayed by the Claimants.
- viii. I award the Claimants one month's salary in lieu of notice in line with the provisions of Section 49 of the *Employment Act* as read with Section 35 and 36 of the *Act*.
- ix. In summary, the Claimants are awarded, salary arrears, leave earned and not taken, gratuity for the period that was not paid and one month's salary in lieu of notice.
- x. The Respondent will pay the Claimants costs taking into account the fact that the suits were resolved through a test suit.

118. Parties are directed to compute the decretal sum in line with this judgment for purposes of final judgment.

DATED, SIGNED AND DELIVERED AT MACHOKOS ON THIS 14TH DAY OF OCTOBER 2022

MAUREEN ONYANGO

JUDGE

