



**Kwamboka Nyakundi v Trustees of Premier Academy Charitable Trust (Cause 2163 of 2017) [2022] KEELRC 12806 (KLR) (6 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12806 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2163 OF 2017  
JK GAKERI, J  
OCTOBER 6, 2022**

**BETWEEN**

**KWAMBOKA NYAKUNDI ..... CLAIMANT**

**AND**

**TRUSTEES OF PREMIER ACADEMY CHARITABLE TRUST .... RESPONDENT**

**JUDGMENT**

1. The claimant commenced this suit by a statement of claim dated October 30, 2017 and filed on November 1, 2017 alleging non-renewal of contract dated June 16, 2017.
2. The claimant prays for;
  - i. A declaration that the non-renewal of the claimant's contract was a termination/dismissal of employment which was unfair and/or wrongful and/or unlawful and/or malicious.
  - ii. Kshs 446,400/= being compensation equivalent to the claimant's 12 month's gross salaries.
  - iii. Kshs 111,600/= being compensation equivalent to 3 month's salary in lieu of notice of termination.
  - iv. Kshs 37,200/= being payment for untaken leave days.
  - v. Kshs 5,000/= being unfairly deducted salary of 4 days.
  - vi. General and exemplary damages.
  - vii. Costs.
  - viii. Interest on (ii), (iii) and (v) at court rates till payment in full.



### **Claimant's case**

3. The claimant avers that she started working for the respondent on March 6, 2014 without a written contract until July 2016 when she was given a written contract of employment effective March 6, 2016 due to expire on July 31, 2017 with prospects for renewal.
4. That on May 2, 2017, the claimant was given a letter of intent to renew contract for another term of 2 years as was the custom and practice of the school and the claimant promptly signed the letter of intent but shortly thereafter the respondent served a non-renewal notice dated June 16, 2017 and her last working day was June 16, 2017.
5. It is the claimant's case that before the non-renewal notice, the respondent had through its Chief Human Resource Officer attempted to and brought in a new employee to take over claimant's duties thus frustrating the claimant.
6. The claimant further avers that the notice of non-renewal of contract was tantamount to a termination of employment between the parties.
7. That since the contract was renewable, the respondent was required to give a valid and fair reason for termination which he did not.
8. The claimant avers that he served the respondent diligently and received salary increments from Kshs 28,000/= to Kshs 37,200/= and had a legitimate expectation that the contract would be renewed and the non – renewal was a termination of employment without notice and thus unfair and the respondent had no valid or fair reason to do so.
9. That due to the financial distress and psychological torture, the claimant suffered a miscarriage.
10. That her gross salary was Kshs 37,200/= per month.

### **Respondent's case**

11. In its statement of response filed on December 6, 2017, the respondent avers that it employed the claimant on fixed term contracts, the last of which was slated to expire on July 31, 2017 and it was not renewed.
12. It is the respondent's case that the claimant accepted employment from March 6, 2014 and the contract lapsed on March 5, 2016 and was thereafter offered and accepted the subsequent contract effective March 6, 2016 to July 31, 2017. This contract had no renewal clause.
13. The respondent states that it did not offer to extend the contract and the letter of intent was not an offer of employment as it merely invited the claimant to express an interest which the respondent would consider for purposes of planning and no new contract had been entered into.
14. The respondent further avers that the claimant's contract had no renewal clause and could only be renewed by mutual consent and the respondent it had no obligation to explain the reasons for non-renewal of the contract and the claimant was notified of the non-renewal within good time and accepted the decision.
15. It is the respondent's case that the fixed term contract could only be extended if both parties mutually agreed and there was no reason to hold a disciplinary hearing since the contract had come to an end.
16. Finally, the respondent prays for dismissal of the suit with costs.



### **Claimant's evidence**

17. In cross-examination, the CW1 confirmed that she had two fixed term contracts of the employment with the respondent and both had a commencement and expiration date and had no automatic renewal clauses. The last contract used the words "should the contact be renewed."
18. It is the claimant's testimony that by letter dated May 2, 2017, the respondent requested the claimant to confirm whether she intended to renew the contract as the respondent was in the process of reviewing staffing requirements for the academic year 2017/2018 and she confirmed her intention.
19. That there was no further communication between the parties until June 16, 2017 when the claimant received a letter of even date indicating that the contract would not be renewed and she acknowledged receipt.
20. Further, the claimant admitted that she received a certificate of service and not every employee's contract of employment was renewed.

### **Respondent's evidence**

21. RW1, Mr Chinmoy Banerjee, the Chief Executive Officer of the school, confirmed on cross-examination that the respondent's school engaged employees on short term contracts of one or two years which may or may not be renewed.
22. It was his testimony that before the contract expired, the respondent would issue a letter of intent to employees for purposes of planning.
23. The witness further confirmed that some workers had served the institution for many years. That the claimant's second contract was for about one (1) year. It was his testimony that the claimant was issued with a letter of intent not a contract and the respondent did not respond to the letter of intent.
24. The witness was emphatic that the letter of non-renewal did not provide reasons and all dues were paid. That the claimant trained a replacement and no disciplinary proceedings were conducted as the claimant had no complaint of misconduct.
25. On dues payable to the claimant, the witness confirmed that he had no record of tabulation of dues.
26. The respondent's witness testified that the claimant was absent for 4 days and did not appeal the termination of his employment.
27. On re-examination, the witness testified that the claimant's contract lapsed on July 31, 2017. That the letter of intent was intended to seek the employee's intention on renewal and was not a contract.
28. That the claimant's payslip for June 2017 had the dues for the month as well as for the month of July, 2017.
29. Finally, the witness testified that no reason was required for non-renewal of the contract.

### **Claimant's submissions**

30. The claimant's submission address issues of unfairness of termination of employment notice of termination and reliefs prayed for.
31. As regards termination of employment, reliance is made on the provisions of section 43 and 45 of the Employment Act as well as Article 47 of the Constitution of Kenya, 2010 to urge that the respondent was required by law to give a valid and fair reason for termination of employment.



32. It is submitted that although the claimant expressed her intention to renew the contract, she received a notice of non-renewal contrary to the respondents practice of renewing short term contracts and the notice of non-renewal did not give reasons for the same.
33. That the letter of intent created a legitimate expectation of renewal of the contract.
34. Reliance is made on section 45(4) of the [Employment Act, 2007](#) to urge that the respondent violated the claimant's right to legitimate expectation.
35. Further reliance is made on the decision in [Oyatsi V Judicial Service Commission](#) (2022) eKLR on failure to confirm an employee to office.
36. The decision in [Teresa Carlo Omondi V Transparency International Kenya](#) (2017) eKLR is also relied upon where the court upheld the principle of legitimate expectation and held that "There was a promise for renewal."
37. It is urged that the respondent's conduct left no doubt that the contract would be renewed.
38. That the non-renewal of contract amounted to a breach of contract.
39. It is further submitted that the act of the claimant of training the replacement was an unfair labour practice.
40. On notice, it is submitted that the respondent ignored the tenets of procedural fairness since it did not comply with the provisions of the [Employment Act](#) in terms of notice.
41. As to whether the claimant is entitled to the reliefs sought, the court is urged award 12 months compensation, 3 months' notice pay, untaken leave days, as well as general and exemplary damages and costs.

### **Respondent's submission**

42. The respondent's submissions address the issues of fixed term contracts, doctrine of legitimate expectation, reasons and notice for non-renewal, effect of the letter of intent and

### **whether termination of employment was unfair.**

43. As regards the terms of employment, reliance is made on the sentiments of Rika J in [Bernard Wanjohi Munuki V Kirinyaga Water and Sanitation Co Ltd and another](#) (2012) eKLR on giving of notice for non-renewal in a fixed term contract.
44. Other decisions such as [Registered Trustees of the Presbyterian Church of East Africa and another V Ruth Gathoni Ngotho Kariuki](#) (2017) eKLR and [Margaret A Ochieng V National Water Conservation and Pipeline Corporation](#) (2014) eKLR are relied upon to urge that the respondent was not required to justify its decision or give notice of non-renewal of the contract as it was a management prerogative.
45. On the doctrine of legitimate expectation, reliance is made on the opinion of *RWR Wade and CF Forsyth, Administrative Law, Oxford University Press 2000* on the essentials of the doctrine.
46. The respondent urges that the doctrine is inapplicable in this case because there was no promise by the respondent to renew the contract and no evidence to that effect has been led and second, there was no evidence of a practice on the part of the respondent that all contracts would be renewed.
47. Finally it is submitted that the letter of intent was an invitation to treat and could not create a contract.



48. It is urged that renewal of one contract cannot create a legitimate expectation that subsequent contracts will be renewed.
49. On notice of non-renewal, it is urged that the respondent was under no obligation to give notice or provide reasons for non-renewal of the contract. Reliance is made on the decisions in [\*Julius Okanga O Mulando V Tradewinds Aviation Services Ltd\*](#) (2022) eKLR as well as [\*Bernard Wanjohi Muriuki's case \(Supra\)\*](#).
50. It is the respondent's case that clause 18 of the contract was only applicable during the substance of the contract, yet in this case the contract had come to an end.
51. As regards the letter of intent which the claimant signed, it is urged that the letter was merely an invitation by the respondent to the claimant to express her intention.
52. Finally as regards the alleged termination of employment, it is urged that the parties had a contractual relationship which ended on July 31, 2017 and the court cannot rewrite the terms of the contract.
53. That the claimant was treated humanely and her ill-health was unfortunate and was not occasioned by the respondent.
54. That the respondent did not violate the provisions of Article 41 of the [\*Constitution\*](#) of Kenya, 2020.

#### **Determination**

55. After careful consideration of the pleadings, evidence on record and submissions by counsel for both parties, the issues for determination are:
  - i. Whether the claimant's contract of employment lapsed or was unfairly terminated by the respondent.
  - ii. Whether the claimant had a legitimate expectation that her contract of employment would be renewed.
  - iii. Whether the claimant is entitled to the reliefs sought.
56. As to whether the contract of employment lapsed or was unfairly terminated by the Respondent, the starting point is the evidence on record which is explicit as confirmed by CW1 and RW1 that claimant entered into a two year fixed term contract effective March 6, 2014 to March 5, 2016. The contract had no renewal clause but was terminable by either party giving two months' notice or two month salary in lieu of notice.
57. After the contract expired, the parties entered into a new contract effective March 6, 2016 to July 31, 2017. The contract was more comprehensive than the previous one. It had definitions and interpretation clause, captured the specific particulars of the claimant and more significantly the duties of the claimant which the previous contract did not have. The salary was also different. It had provisions on illness, children's education benefit, secrecy, indemnity, assignment notices, deductions by the employer, applicable law renewal, performance assessment and severability.
58. Clause 2.0 of the contract provided as follows;

"Should the contract be renewed for a further period by mutual consent, then the employee will be entitled to salary for the month of August 2017.
59. Additionally, clause 17 provided that;
  1. The term of this contract may be extended at the sole discretion of the Employer.



2. Such extension of the term shall be by letter addressed to the employee by the employer containing any variations to this contract and signed by the employee in acceptance of the extension.
60. In light of the foregoing, although the parties have described this contract as a renewal of the previous one, it is evident that the parties entered into a new contract and on different terms.
61. Moreover, letter of intent to renew was availed to the court as evidence of the renewal. The contract was due to lapse on July 31, 2017.
62. It is common ground that the claimant received a letter of intent to renew the contract and indicated her intention and signed the same on May 3, 2017 and received no other communication until June 16, 2017 when she received the notice of non-renewal. A renewal would have taken effect from August 1, 2017. The letter of non-renewal stated that the last day of work would be June 16, 2017.
63. As the court understood it, the claimant was not contesting the fact that contract was terminated on June 16, 2017 but that the contract should have been renewed. The contest is principally on renewal.
64. The law on fixed term contracts is well settled. In *Savings and Loans Kenya Ltd V Mayfair Holding Ltd* (2012) eKLR, the Court of Appeal stated as follow;
- “ . . . applying the foregoing principles to the instant case, the inescapable conclusion in the view of the court is that the claimant’s contract of employment ended on expiry of its duration on May 12, 2013 as submitted by the respondent and repeatedly confirmed by the claimant in cross-examination and the respondent was under no obligation to renew the contract or notify the claimant that the contract had indeed lapsed.”
65. In *Registered Trustees of the Presbyterian Church of East Africa and another v Ruth Gathoni Ngotbo-Kariuki* (Supra), the Court of Appeal expressed itself as follows;
- “The rights and obligations of an employer and employee generally flow from the contract of service. Therefore, the construction of such a contract is to determine the terms and legal effect of the same. The general rule is that the intention of the parties to an agreement should be ascertained from the document as it is deemed that what the parties intended is what is stated in the agreement.”
66. Similar sentiments were expressed in the *Savings and Loan Kenya Ltd* case (supra).
67. From the evidence on record, it is the finding of the court that the respondent employed the claimant under a fixed term contract renewable upon expiry and the claimant expressed her intention for renewal of the contact.
68. In the *Registered Trustees of the Presbyterian Church of East Africa and another* (Supra), the court was categorical that;
- “ Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations or expectations beyond the date of expiry...”
69. Having found that the claimant was engaged on a fixed term contract from March 6, 2016 to July 31, 2017, was the respondent bound to give notice of its lapsing or reasons for non-renewal?



70. In response to this question, the court is guided by the sentiments of Rika J in the Bernard Wanjohi Muriuki's case (Supra) 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 . . . 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 of the termination.”

71. Contrary to the claimants submission that the respondent was required by law to provide a valid and fair reason, it was not legally bound to do so as emphasized by RW1 in cross-examination.

72. For the foregoing reasons, the court is satisfied that the respondent has on a balance of probabilities established that the contract of employment between itself and the claimant terminated by effluxion of time on July 31, 2017.

73. As to whether the claimant had a legitimate expectation that the contract would be renewed, the starting point is the jurisprudence emerging from this court, that as a general rule, there is no legitimate expectation of renewal of fixed term contract. This rule is, however subject to exceptions such as practice by employer, previous renewals, promise by the employer on fulfilment of certain conditions by employee and the same are fulfilled or conduct of the employer. (See *John Nduba v Africa Medical and Research Foundation (AMREF) Health Africa* (2020) eKLR).

74. In *Teresa Carlo Omondi v Transparency International Kenya* (Supra), the court stated as follows:

“It must be shown that the employer, through regular practice or through an express promise, leads the employee to legitimately expect there would be renewal. The expectation becomes legally protected, and ought not to be ignored by the employer, when managerial prerogative on the subject is exercised. Legitimate expectation is not the same thing as anticipation, desire or hope. It is a principle based on a right, grounded on the larger principle of reasonableness and fair dealing between employers and employees.”

75. Further, the court expressed itself as follows;

“The court is satisfied that the claimant had a legitimate expectation that her contract would be renewed. It was not merely a wish, a hope or a desire for continuity. It was a legitimate expectation rooted in the contract of employment. There was a promise for renewal subject to fulfilment of certain conditions. These conditions were fulfilled. The claimant performed satisfactorily . . .”

76. In the instant case, the contract of employment made no promise for renewal of the contract and the claimant had no conditions to fulfil. The contract merely states that;

“Should the contract be renewed for a further period, by mutual consent . . .” which merely means that in the event both parties agree to renew the contract.

77. Relatedly, the claimant rendered no evidence that respondent had a practice of renewing contracts of all its employees whenever their term expired. RW1 confirmed that whereas some contracts were renewed, others were not.



78. Finally, contrary to the claimant's submission that the respondent's conduct left no doubt that the contract would be renewed, the claimant led no evidence of the alleged conduct. The fact that the respondent gave the claimant a letter of intent to express her intention to renew the contract and the claimant expressed her intention to have the contract renewed, a practice confirmed by CW1 and RW1 in evidence is not sufficient conduct on the part of the respondent to create a legitimate expectation of renewal.
79. Flowing from the foregoing reasoning, the court is satisfied that the claimant has on a balance of probability failed to establish that she had a legitimate expectation that the contract of employment would be renewed.
80. Consequently, it is the finding of the court that non-renewal of the claimant's contract of employment did not amount to termination of the employment contract.

### **Reliefs**

81. Based on the foregoing findings, it is clear that the issue of the reliefs prayed for by the claimant falls by the wayside.
82. In the final analysis, the claim herein is dismissed.
83. Parties shall bear own costs.  
Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 6TH DAY OF OCTOBER 2022**

**DR. JACOB GAKERI**

**JUDGE**

