



**Otiende v Trustees of Premier Academy Charitable Trust t/a Premier Academy  
(Cause 2167 of 2017) [2022] KEELRC 13362 (KLR) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13362 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2167 OF 2017  
SC RUTTO, J  
NOVEMBER 30, 2022**

**BETWEEN**

**GRACE AMOLO OTIENDE ..... CLAIMANT**

**AND**

**THE TRUSTEES OF PREMIER ACADEMY CHARITABLE TRUST T/A  
PREMIER ACADEMY ..... RESPONDENT**

**JUDGMENT**

1. The claimant avers that she initially joined the respondent school from February, 2011 to July, 2011. That she was subsequently given a two year contract commencing August, 2011 with prospects of renewal for further similar periods as is the tradition and practice of the school. That the initial contract was later renewed in the year 2013 for two years and further in 2015 for another two years. That in early 2017, she was given a letter of intent to renew the contract for another term for two years. That she promptly signed the aforesaid letter of intent.
2. Things took a turn and the claimant was issued with a Notice of Non Renewal of Contract dated 21<sup>st</sup> April, 2017. This was to mark the beginning of the end of the employment relationship. The claimant was aggrieved by the said non-renewal of contract which she has termed as unfair and unlawful termination of her employment.
3. It is on this account that the claimant seeks against the respondent:
  - a. a declaration that the non-renewal of her contract was a termination or dismissal from employment which was unfair and/or wrongful and/or malicious;
  - b. the sum of Kshs 1,218,876.00 being compensatory damages;



- c. Kshs 304,719.00 being compensation equivalent to three months salary in lieu of notice;
  - d. General and exemplary damages;
  - e. Costs; and
  - f. Interests on (b) and (c) above at court rates until payment in full.
4. The claim did not go unopposed. On its part, the respondent contends that the claimant was employed on fixed term contracts and that the last contract whose end date was 31<sup>st</sup> July, 2017, was not renewed. That each of the contracts the claimant entered into from February, 2011 upto 31<sup>st</sup> July, 2017 were independent and separate of each other and did not have renewal clauses and expressly stated the respective commencement and expiry dates. That it never offered to extend the claimant's employment with it once the contract ending 31<sup>st</sup> July, 2017, lapsed. Consequently, the respondent has asked the Court to dismiss the suit with costs.
  5. The matter proceeded for part hearing on 27<sup>th</sup> October, 2021, and further on 7<sup>th</sup> June, 2022 when the defence rested its case, thus marking the end of the trial. Each side presented oral evidence.

#### **Claimant's case**

6. To start with, the claimant adopted her Statement of Claim, witness statement, Verifying Affidavit together with her bundle of documents to constitute her evidence in chief.
7. It was the claimant's testimony that in February 2011, she took up employment with the respondent school having worked with Oshwal Academy Nairobi for 13 years. That following a successful interview, she was offered employment and started teaching in February, 2011. That the initial contract was for about five months, which period was meant to enable the respondent streamline her contract with those of the other staff, so as to start the term contract in the month of August when the term contracts are renewed.
8. That the respondent's mode of employment was based on term contracts hence her two year contract, began in August 2011 and was renewed in the year 2013 for two years and later in 2015 for another two years that was to run upto July, 2017.
9. That in early 2017, she was given a letter of intent to renew the contract for another term of two years, as was the custom and practice of the school and she promptly signed the same. That shortly thereafter, to her shock and dismay, she was served with a Notice of Non-Renewal of her contract.
10. Recollecting the events that preceded the issuance of the Notice of Non-Renewal, the claimant stated that she was falsely accused of engineering an "anonymous" complaint email to parents of the school on 27<sup>th</sup> February, 2017. That Mr. Clifford Oluoch, the head of the Primary Section of the School, summoned her on or about the 2<sup>nd</sup> of March, 2017 to his office regarding an email that had been sent to some parents of the school children. That the email was addressed to "Mr. Vijay Patel and the entire BOG" and was signed off by a "Mrs. N. V. Patel." That the gist of the complaint was that students were not learning, were concentrating on field sports and that the teachers were being frustrated. That all this was allegedly being engineered by the new CEO, Mr. Chinmoy Banerjee.
11. The claimant further told Court that Mr. Clifford informed her in the presence of a Ms. Ndindi, that she was the main suspect behind the anonymous email and Ms. Ndindi suggested that she sees the respondent's CEO, Mr. Chinmoy Banerjee.



12. That she called Mr. Banerjee who agreed to see her the following day which happened to be 3<sup>rd</sup> March, 2017. That Mr. Banerjee maintained that the email had emanated from her hence fearing for her reputation and job, she humbly requested that the IT (Information Technology) experts and police be involved in the investigations but this was never done.
13. That things appeared to have lulled and went back to normal for sometime. That however, without any reason or justification whatsoever, she was summoned to the Human Resource Office on 22<sup>nd</sup> April 2017 and given a letter for Non-Renewal of Contract dated 21<sup>st</sup> April, 2017. That she felt helpless and hurt hence requested for time to sign it. That in a bid to desperately save her job, she went to see the then principal, Mr. Kiyimba, who advised her that she had no option but to sign it. That she reluctantly signed the letter on 25<sup>th</sup> April, 2017 and returned it to the Human Resource Office.
14. That she went on with her teaching duties and without any warning or reason yet again, she was summoned to the Human Resource Office and given a letter on 12<sup>th</sup> May, 2017 dated the same day and was informed that she had been “detached” from the school. That the letter required her to immediately clear with the school and also stated that her last working day would be the same day, that is 12<sup>th</sup> May, 2017.
15. That she fully complied and cleared with the school and was given a cheque for the remainder period of her contract term.
16. She contends that the termination marked as a “Non-Renewal” was a result of the alleged accusation levelled against her with regards to the aforesaid anonymous email. That being a renewable term contract, the respondent was obliged to give her a fair and valid reason for termination of her employment. That her termination was abrupt and unfair in the circumstances.
17. She added that since she began her employment to the time of the termination, she diligently executed her duties and excelled in her performance resulting to increase in her salary. That further, owing to her performance, she was appointed as a Pastoral Coordinator which attracted a monthly allowance of Kshs 5,000/-. That she further received an acknowledgement and recommendations by the respondent as a result of her exemplary work. That therefore, she had genuine reasonable and legitimate expectation that her contract would be renewed.
18. She urged the Court to consider her claim and award her the reliefs sought in the Statement of Claim.

### **Respondent’s Case**

19. The respondent called oral evidence through Mr. Chinmoy Banerjee and Ms. Tabitha Kimani who testified as RW1 and RW2 respectively.
20. Mr. Banerjee was the first to go. He started off by adopting his witness statement and the respondent’s bundle of documents to constitute his evidence in chief.
21. He identified himself as the CEO of the respondent. That he joined the respondent school in 2015 and is in charge of its administrative functions and overall control over its financial, human resource and support services. He stated that the respondent is an international school offering IGCSE/British Curriculum Education in Kenya, to children and young adults from diverse racial, ethnic and national backgrounds.
22. That the respondent employs most of its members of staff on contract and the present norm is for such contracts to run for two years commencing at the beginning of the IGCSE school year and ending, almost two years later, at the end of the IGCSE school year.



23. That the claimant had four two year term contracts. That unlike the other contracts, the last one did not have a renewal clause. That it could only be renewed if both parties agreed, mutually and freely to do so. That in this case, the respondent did not want such renewal and could not and cannot be forced to do so.
24. That towards the end of each employee's contract, the practice of the respondent school is to ask a teacher or member of staff, whose contract is about to expire, to inform the school whether or not he or she wishes to have his or her contract renewed. That this practice is founded on the respondent's planning requirements. That naturally, the respondent needs to know which members of staff it should offer employment, and which ones it shouldn't. That it is on this ground that it sought the claimant's intent through the "letter of intent". The letter of Intent isn't therefore an offer of employment and is at best an "invitation to treat" which can't found a contract at law. This fact was and is well understood by the members of staff. It was a communication seeking intent and not expressing intent.
25. That the letter of intent was to allow for planning and that the same was not an offer and did not guarantee employment or renewal of contract. That the claimant's contract lapsed in July, 2017 and was not renewed. That there are other employees whose contracts were also not renewed. RW1 further denied receiving any complaints against the claimant. That the allegations did not have a bearing on the respondent's failure to renew her contract.
26. That he was not aware of any legal or contractual requirement calling for disciplinary hearing prior to making a decision not to renew a contract. That his understanding of such matters is that decisions of that nature are discretionary.
27. RW2 identified herself as the respondent's Human Resource Manager. Similarly, she proceeded to adopt her witness statement and the respondent's documents to constitute her evidence in chief.
28. She told Court that on account of her position, she is the custodian of the employment records of all the members of staff of the respondent and consequently, she has looked at the records of the claimant. That she is also personally aware of the claimant's human resource records and is acquainted with her at a personal level since being employed by the respondent.
29. That as per the claimant's employment records, she was first issued with an employment contract that commenced on 15<sup>th</sup> February, 2011 and terminated on 31<sup>st</sup> July, 2011 as this initial engagement was entered into in the middle of term. That the claimant executed her third contract on 1<sup>st</sup> September, 2013 which terminated on 31<sup>st</sup> July, 2015 and later another one which commenced on 1<sup>st</sup> September, 2015 and was to terminate on 31<sup>st</sup> July, 2017. That these contracts were fixed with a designated effluxion date and had no renewal clause. That the contract ending on 31<sup>st</sup> July, 2017, was independent and separate from the three other contracts and had new terms. That the said contract bound the parties up to 31<sup>st</sup> July, 2017.
30. That there being a no renewal clause, and bearing in mind its planning needs the respondent, requested the claimant in writing, to let it know if she would be interested in having her contract renewed. That the said letter was expressly referred to as "Letter of Intent" and specifically stated that "to enable the school plan accordingly, you are requested to indicate whether you intend to renew your contract or not". That by that fact therefore, intent was sought from the claimant, and none expressed by the respondent. That it was not, and could not be said by any reasonable person to be an offer of employment and could not therefore found a contract.
31. RW2 further stated that the said "letter of intent" was sent to all employees whose contracts were about to lapse with the intention being, to gauge the desire of the staff, to establish staffing requirements and



- ultimately to carry out staff evaluation in an optimal manner with a view to determining whether to, and which contracts to renew.
32. That by signing the letter of intent, the claimant could not be said to have accepted an offer of employment, since no such offer had been made by the respondent.
  33. That the respondent acted in the most humane, considerate and understanding manner possible and although her contract was due to lapse on 31<sup>st</sup> July, 2017 and despite the fact it was not bound to communicate anything to the claimant, the respondent nevertheless informed her of its decision well ahead of time.
  34. That following evaluation of the staffing requirements of the school it was decided that notwithstanding her desire to renew the contract of employment, no new contract would be offered to the claimant, a decision she accepted.
  35. That the decision of the school was lawful and within the terms of the last contract it had with the claimant. That the same also accorded with the school's terms and conditions of service of its teaching staff.
  36. It was RW2's further testimony that her employment being contractual in nature, the claimant knew, or ought reasonably to have known that the respondent was under no obligation to renew, or to offer her a new contract.
  37. RW2 further stated that she is not aware of any accusations levelled against the claimant in respect of "anonymous letters". That had there been such complaint or complaints the claimant would have either been warned, in writing or asked in writing, by way of a Show Cause Letter to explain her conduct. That she has not shown evidence of such documents. That it is clear that the claimant through these allegations of anonymous complaints, seeks to change the character of her employment to be that of a permanent nature, to resile from the express terms of her contract and to reap from where she has not sowed.
  38. She added that the claimant was an employee of average ability and her skills were unexceptional.
  39. That she is aware that in accordance with the terms of her contract, the claimant received her pay upto and including 31<sup>st</sup> day of July, 2017. That being a professional human resources specialist, she is aware that there is no requirement at law or in best human resource practices for an employee whose contract is not being renewed to be given reasons for non-renewal, or otherwise to be subjected to a disciplinary process of any sort. That in any event her last contract did not call for any such process.
  40. That therefore, the claimant has no valid cause of action against the respondent and would therefore be fair and just to dismiss the claim as it is devoid of merit and to award costs thereof to the Respondent.

## Submissions

41. It was submitted on behalf of the claimant that the respondent was obliged to give a fair and valid reason for her termination as per sections 43 and 45 of the Employment Act. That she was not given any reason for the non renewal of her contract. It was further submitted that the non renewal of contract was meant to punish the claimant for the alleged malicious email yet she was never accorded a right to hearing regarding the said email. To buttress this argument, the claimant cited the case of *Oyatsi v Judicial Service Commission* (Petition E111 of 2021) [2022] KEELRC 3 (KLR) and that of *Teresa Carlo Omondi v Transparency International* (2017) eKLR.
42. The claimant further submitted that the actions of the respondent were unfair and had no justification whatsoever and that she ought to have been given an opportunity to be heard.



43. On the part of the respondent, it was submitted that the wording of the claimant's fourth contract was conscious and deliberate and that no legitimate expectation to renew the same could be founded on it. It was further submitted that the claimant's contract did not place an obligation on the part of the respondent to provide a reason. The respondent asked the Court to consider the decisions in Bernard Wanjohi Muriuki v Kirinyaga Water & Sanitation Co. Ltd & another (2012) eKLR, Julius Okanga Omulando v Tradewinds Aviation Services (2022) eKLR, Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho-Kariuki (2017) eKLR, Margaret A. Ochieng v National Water Conservation & Pipeline Corporation (2014) eKLR and Nairobi Petition No. 35 of 2012 George Onyango v the Board of Directors of Numerical Machining Limited & others.
44. The respondent further submitted that the contract could only have been renewed with the consent and agreement of both parties.
45. It was the respondent's further submission that the doctrine of legitimate expectation was not applicable in the instant case. That there was no promise that her contract would be renewed. That the letter of intent was an invitation to treat and could not found a contract. That an enforceable contract could only be created once a letter of offer made by the respondent was accepted unconditionally by the claimant.

### **Analysis and Determination**

46. Flowing from the pleadings, 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. Whether the non-renewal of the claimant's contract amounted to termination.
  - 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?

Whether the non-renewal of the claimant's contract amounted to termination.
47. At the heart of this dispute is the non-renewal of the claimant's contract of employment.
48. It is common ground that the claimant had served the respondent on two year fixed term contracts from September, 2011 with her initial engagement having commenced on 8<sup>th</sup> February, 2011. Whereas the claimant's previous contracts of employment had been renewed, the same was not the case with regards to her contract which was executed on 22<sup>nd</sup> April, 2015 and which was to terminate on 31<sup>st</sup> July, 2017. It is the non-renewal of that contract that has triggered the instant dispute.
49. As per the preamble of the said contract, it was to commence on September, 2015 and end on July, 2017. The exact dates are not provided. The relevant extract reads thus:
 

“Premier Academy is pleased to offer you the position of a teacher on a Two year Contract commencing on Sept. 2015 and ending on July, 2017. Attached please find a list of your duties...”
50. It is therefore evident that the contract was fixed for two years. As it would be, the claimant's contract of employment was not renewed and she was informed as much through a letter dated 21<sup>st</sup> April, 2017 which is couched as follows:

“RE: Notice Of Non-renewal Of Contract

We refer to your present employment contract dated 30-3-2015 and expiring on 31-07-2017.



Note that the said contract will not be renewed. We thank you for your immense contribution to the Academy and are grateful for the services rendered. Your last working day will be 31<sup>st</sup> July, 2017 and you will be required to discharge your duties with utmost respect and dignity for the remainder of your term in office...”

51. Ordinarily, fixed term contracts carry no obligation or expectation of renewal. In this case, the claimant’s contract was very explicit that its duration was for two years. Therefore, it followed that upon expiry of the two year period, there were two possibilities, renewal or non-renewal. In this case, the respondent opted not to renew the contract.
52. As was determined by the Court of Appeal in the case of *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki* [2017] eKLR:

“[29]. Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.”
53. Further, in the case of *Enid Nkirote Mukire v Kenya Yearbook Editorial Board* [2022] eKLR, the Court held that:

“As has been held by the courts in numerous cases, including the ones cited by the Respondent, an employee on a fixed term contract is aware of the date of expiry of the contract from the date the contract is signed. Such an employee needs no notice for termination of the contract as the contract terminates by the expiry of its term.”
54. This issue was further considered by the Court of Appeal in the case of *Trocaire v Catherine Wambui Karuno* [2018] eKLR where it was determined that:

“16. It is clear from the evidence on record that the respondent’s employment was governed by fixed term contracts. As aptly observed by Lord Denning MR in *British Broadcasting Corporation v Ioannou* [1975] 2 All ER 999 such a contract binds parties for the term stated in the agreement. In our view, the duration for the third contract was expressly stipulated therein, that is, for a period of four months running from 1<sup>st</sup> March, 2014 up to 30<sup>th</sup> June, 2014.....[19]It follows that the contract in question automatically lapsed on 30<sup>th</sup> June, 2014 by effluxion of time. That being the case the reason given by the appellant in its letter to the Ministry of labour for its decision not to renew the respondent’s contract and the payment of what was termed as a redundancy package in our view, has no relevance to this dispute. We also find that the same could not have been a basis of finding that the respondent had been declared redundant...”.
55. Back to the instant case, it is evident that the lifespan of the claimant’s contract was already predetermined for two years. Therefore, at the end of the two years, the contract was to terminate by effluxion of time.
56. It is also notable that the claimant’s contract did not have a renewal clause. What manifests from this is that the parties’ options were open. The claimant was bound to expect any outcome at the end of her contract period. Indeed, the absence of a renewal clause from the contract took away any legitimate expectation on the part of the claimant. There was nothing in the contract to infer an extension after the end date.



57. In addition, the fact that the claimant had to sign a letter of intent further confirms that the renewal of her contract was not automatic but rather subject to other procedural requirements.
58. As to the significance of the said letter of intent, it is my view that the same was not an express offer as to constitute an expectation from the claimant's end.
59. The said letter of intent which is dated 28<sup>th</sup> March, 2017 states as follows:

“The Academy is in the process of reviewing staffing requirements for the academic year 2017/2018. Your contract is due for renewal by mutual agreements at the end of the current academic year 2017. To enable the school plan accordingly, you are requested to indicate whether you intend to renew your contract or not...”

60. The way I see it, the purpose of obtaining the claimant's intent was to allow for the respondent plan and review its staffing requirements. The fact that the claimant declared her intent to renew her contract did not impose an obligation on the respondent to renew her contract.
61. Therefore, and going by the wording of the letter of intent, the claimant was only required to declare her intent so as to allow the respondent review its staffing requirements and plan accordingly. I do not see how the same can be construed as an offer. There was no express communication that the same was to culminate in a contract renewal.
62. Indeed, the claimant had the option of not declaring her intention to renew her contract. Therefore, had she opted to declare a negative intent, she would have been within her right and it is unimaginable that she would have been forced to enter into a fresh employment contract with the respondent despite her intention not to do so.
63. The total sum of my consideration is that the claimant's employment was not terminated through the non-renewal of her contract, rather her contract ran its course and ended through effluxion of time. Therefore, the claimant's assertion that she was terminated from employment does not hold water.
64. That said, the issue of a hearing pursuant to section 41 of the Employment Act does not arise. Similarly, the respondent was not obliged to give reasons for the non renewal of contract. Such was the determination in the case of *Trocaire v Catherine Wambui Karuno* [supra] where it was held 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. This much was appreciated by this Court in *Oshwal Academy (Nairobi) & another v. Indu Vishwanath* [2015] eKLR which quoted with approval Rika, J.'s sentiment in *Bernard Wanjohi Muriuki v Kirinyaga Water And Sanitation Company Limited & another* [2012] eKLR:-

“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.



65. Against this background, the claimant cannot allege to have been unfairly terminated. Having found as such, the next issue for determination falls by the wayside as logically, it cannot be determined.
66. Subsequently, the claim for compensatory damages and salary in lieu of notice fail as there has been no finding of unfair termination. This finding resonates 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 Ngotbo- Kariuki* [*supra*], thus:

“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.”

### **Orders**

67. Ultimately, it is the Court’s finding 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 30<sup>TH</sup> DAY OF NOVEMBER, 2022.**

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**STELLA RUTTO**

**JUDGE**

Appearance:

For the Claimant Ms. Kinyanjui

For the Respondent Mr. Mutai

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

