



**Sipeti v Label Converters Limited (Cause 155 of 2017)
[2022] KEELRC 13481 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13481 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 155 OF 2017
AN MWAURE, J
NOVEMBER 24, 2022**

BETWEEN

JOHN SIPETI CLAIMANT

AND

LABEL CONVERTERS LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed suit by a Statement of Claim dated and filed on January 30, 2017 seeking damages for unlawful and/or wrongful termination. The Respondent filed its Response to the Claim on February 28, 2019.

Claimant's Case

The Claimant's case is pleaded as follows:

2. The claimant states that he was employed by the respondent as a Cleaner on or about the year 2012 and later on promoted to a Machine Operator, on or about February 2016.
3. The claimant says that he joined the Kenya Union of Printing Publishing, Paper Manufacturers and Allied Workers Union (KUPRIPUPA) about May 2016 and that the respondent issued him with a notice for outsourcing for non-core business on September 1, 2016.
4. The claimant says he was terminated from service in October 2016 despite serving the respondent with loyalty and diligence until the said date. No termination notice was issued on the same.
5. The claimant avers that he was wrongfully and unfairly terminated because he had joined the Union (KUPRIPUPA) and further contends that the respondent never gave him an opportunity to be heard as contrary to the provisions of section 43 of the *Employment Act*.



6. The claimant therefore prays for a declaration that the termination was unfair and unprocedural, and asks for damages for wrongful termination and terminal dues owed to him.

Respondent's Case

7. The respondent filed its response to the Claim on February 28, 2019. It avers that the claimant was employed on a yearly Contract subject to renewal with the last Contract being signed on January 1, 2016 and that the claimant was aware that their contract of employment would lapse on expiry of the contract period. It states that the Contract terminated on October 1, 2016 and the claimant was paid his dues in full on October 15, 2016.
8. The respondent denies that the claimant was dismissed because he had joined a trade union and is affirmative that the right to join a trade union is a Constitutional right.
9. The respondent says that the claimant was given one month notice of termination on September 1, 2016 and thus the employment Contract was properly terminated.
10. The respondent also states that they are not liable to pay terminal dues and severance pay as the claimant's NSSF statutory deductions were paid as and when they became due.
11. The respondent says that the claimant's suit should be dismissed as the Claim has been settled.

Claimant's Evidence

12. The claimant (CW1) in his sworn evidence in court adopted his witness statement and documents which reiterates the contents of the Memorandum of Claim. The Claimant states that he was employed by the Respondent as a Cleaner in 2012, and later promoted to the job of a Machine Operator at a Salary of Kshs. 12,154.
13. He went for leave in September 2016 while on night shift, and on reporting back to the Respondent's premises he was told to go home, and that they would call him back.
14. He says that when he returned in October, he was terminated on allegation that he had asked people to join a union which allegations he denies. He was not given a warning letter or a termination letter.

Respondent's Evidence

15. The respondent did not call any witness in court neither did they file any witness statements.

Claimant's Submission

16. The claimant in his submissions states that he was wrongfully, unfairly and without justifiable cause terminated by the Respondent contrary to section 35 of the *Employment Act* as read with sections 41 and 42 thereof. He relies on the case of Alex Muriuki v Kakuzi Ltd Civil Case No. 2003, wherein Justice Odunga, underscored the importance of giving a termination notice as a way of protecting employees against unjustified dismissal.
17. Further, the claimant states that he was unfairly and unprocedurally terminated from employment pursuant to section 45 of the *Employment Act* and is thus entitled to terminal dues and other benefits as prayed in the Memorandum of Claim.



Respondent's Submissions

18. The respondent in their submission say that the claimant's Contract was for one year which ended on August 31, 2016, and as such the claimant's Contract ended, by effluxion of time and therefore he was not terminated.
19. The respondent also says that the claimant's Contract had already expired on August 31, 2016 when the notice to outsource was issued on September 1, 2016, and he was therefore not an employee of the Respondent at the time.
20. The respondent is affirmative that after the termination, the claimant was paid KShs. 32,084/= as his final dues on 15th October.
21. The respondent asserts that the claimant has not proved unfair termination in satiating his burden of proof under section 47 of the *Employment Act*, 2007, placing reliance on the case of George *Okello Munyolo v Unilever Kenya Ltd* (2019) eKLR at the ELRC Court at Kericho being ELRC No. 56 of 2018.
22. Issues for Determination
 - a. Whether the claimant was wrongfully, unfairly and without any justifiable cause terminated from employment
 - b. Whether the claimant is entitled to reliefs sought
 - c. Who should bear the costs of the suit

Determination

23. It is evident that the claimant was employed on a one-year contract subject to renewal and was to run from September 1, 2015 to August 31, 2016. In the claimant's list of documents at page 15, He has attached a 1 year contract/appointment letter which shows that his employment contract was to end on August 31, 2016 as correctly stated by the respondent. This means that he was not an employee of the respondent in September when the facts in issue giving rise to the suit herein arose. His claim is therefore limited to the period prior to the expiration of his contract on August 31, 2016. (The Contract ended by effluxion of time which thereby discharges both parties of obligation)
24. Numerous case have emphasized that fixed contract terminate by effluxion of time. The Court of Appeal has expressed itself variously on the law relating to fixed term contracts. In *Francis Chire Chachi v Amatsi Water Services Company Limited*, [2012] eKLR the court stated as follows: –

“ This court has recently stated that employers are not under any obligation to give employees reasons for non-renewal of fixed term contracts, unless there is such an obligation created in the expiring contract.”
25. These sentiments were echoed in *Oshwal Academy (Nairobi) & another v Indu Vishwanath* [2015] eKLR where the Court cited with approval the words of Rika J. in *Bernard Wanjobi Muriuki v Kirinyaga Water and Sanitation Company Limited & another* [2012] eKLR, to underscore the point that an employer need not give reasons to an employee why a fixed term contract should not be renewed. In the words of the Learned Judge:

“ ... 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.”

26. Further in the case of *The Registered Trustees De La Salle Christian Brothers T/A St. Mary's Boys' Secondary School v Julius D. M. Baini* [2017] eKLR and The Registered Trustees of the *Presbyterian Church of East Africa & another v Ruth Gathoni Ngotbo-Kariuki* [2017] eKLR, where the court stated that: -

“Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the respondent's contract ought not to have been maintained.

27. The case before me the claimant had a contract signed by both parties and dated January 12, 2016 and was to terminate on August 31, 2016 from 1st September, 2015. He says he was terminated in October, 2016 but then there is no letter of termination.
28. The respondents are emphatic they did not terminate his employment but the same terminated by effluxion of time due to the lapse of contract. In the contract it was clear it was a 1 year contract.
29. Even as the respondents were outsourcing for cleaning services on 1st September, 2016 the claimant's contract had already expired.
30. The court has said time and again that it will not rewrite contracts between the parties but its role is to enforce the contracts. This contract expired by effluxion of time and it follows the claimant was not unlawfully terminated. The court finds the claimant did not prove a case of unlawful termination and so his case is dismissed.
31. Having said so if there are any dues legitimately owing to the claimant, the same must be settled. claimant according to the computation by the respondent of September 6, 2016 was to be paid salary for the month of August, 2016.
1. Which was KShs.12,174/-.
 2. Underpayment as a Machine Operator – 14,173/= - 12174/=
1999 x 6 = 11,994/-
He will be paid KShs.24,168/- plus interest at Court rates from date of judgment till full payment.
32. It is fair to order each party however will meet their costs taking into consideration Claimant offered services to the respondent for over 4 years.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 24th day of November, 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 has 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 **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.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE

