



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 337 OF 2016

MBITI FRANCIS MUSOLI.....CLAIMANT

v

EQUATOR BOTTLERS LIMITED.....RESPONDENT

Consolidated with

CAUSE NO. 338 OF 2016

MUGHAISHI LUKA SHILOBA.....CLAIMANT

v

EQUATOR BOTTLERS LTD.....RESPONDENT

AND

GEORGE OTOENO WAGA.....CLAIMANT

v

EQUATOR BOTTLERS LTD.....RESPONDENT

JUDGMENT

1. Mbiti Francis Musoli (the Claimant) instituted these legal proceedings against Equator Bottlers Ltd (the Respondent) on 16 November 2016 and he stated the Issue in Dispute as

(a) Unlawful and unfair dismissal from employment.

(b) Non-payment of terminal dues.

2. On the same day, Mughaiishi Luka Shiloba and George Otieno Waga also commenced action against the Respondent and they set out similar Issues in Dispute.

3. The Respondent filed its Response on 29 December 2016 and this prompted the Claimants to file separate Reply to the Defence on 18 January 2017.

4. The Respondent filed a List of Documents on 30 January 2017 and on 7 January 2018, the Court directed that this Cause and Kisumu Cause No. 338 of 2016, *Mughaiishi L. Shiloba v Equator Bottlers Ltd* and Kisumu Cause No. 339 of 2016, *George Otieno Waga v Equator Bottlers Ltd* be consolidated. This Cause was to serve as the lead file.

5. Despite the order, the Court recorded this Claimant's evidence in Cause No. 338 of 2016. The testimony was taken on 7 October 2019.

6. The Respondent's case was taken on 4 November 2020 after which the Claimants filed separate submissions on 15 December 2020. The Respondent filed its submissions on 27 January 2021.

7. The Claimants identified 3 Issues in their submissions (paraphrased):

- (i) Whether the Claimant(s) were permanent employee(s) of the Respondent.
- (ii) Whether the termination of the Claimants' employment was fair.
- (iii) Whether the Claimants are entitled to the reliefs sought.

8. The Respondent raised 2 Issues in its submissions:

- (i) Whether the Respondent terminated the Claimants from employment or the contracts lapsed by effluxion of time.
- (ii) Whether the Claimants are entitled to the reliefs sought.

9. The Court has considered the pleadings, evidence and submissions and will adopt the Issues as suggested by the parties.

Nature of contracts

10. The Claimants did not produce copies of their contracts of employment despite contending that they were employees of the Respondent.
11. However, copies of Provisional Member Statements of Account from the National Social Security Fund were filed in Court. The Statements indicate that the Claimants were employed by the Respondent.
12. The Respondent produced several copies of contracts (dated 19 September 2011, 26 January 2012 and 30 March 2016).
13. The contracts dated 30 March 2016 expressly provided that they would expire on 30 June 2016.
14. The Claimants conceded in their submissions that the contract would be renewed every 3-months.
15. The definition of *contract of service* at section 2 of the Employment Act, 2007 envisages contracts of a definite duration. The same nature of contract is further provided for in section 10(2)(e) of the Act in respect to particulars of employment.
16. On the basis of the contracts and more so the contracts dated 30 March 2016, it is not in doubt that the Claimants were on a contracts of definite duration by the time of separation (fixed-term contracts) and not on a contracts of indefinite duration to entitle them to consider themselves as on permanent and pensionable terms.

Unfair termination of employment

17. The Claimants pleaded case were that they were dismissed on 2 July 2016. In the witness statements which were adopted as part of evidence, the Claimants asserted that when they reported to work on 2 July 2016, they was informed by a supervisor that their contracts had been terminated.
18. The Respondent's case was that the Claimants contracts expired by effluxion of time on 30 June 2016 and were not renewed. Renewal, it was stated was at the discretion of the Respondent.
19. To buttress its case, the Respondent produced employment records including Employee Clearance Forms all dated first week of July 2016.
20. The Clearance Forms which were processed immediately after the Claimant's contracts were to lapse, in the view of the Court, are satisfactory evidence that these were cases of contracts which lapsed and were not renewed and therefore not one of unfair termination of employment.
21. In *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho-Kariuki* (2017) eKLR, the Court of Appeal had this to say about non-renewal of a fixed-term contract of employment

We note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry..... Similarly, since the respondent's contract came to an end by effluxion of time any claim for wrongful termination could not be maintained.

22. The remedies of compensation and notice pay are, in the circumstances not available to the Claimants.

Accrued leave

23. The Claimants sought monies on account of earned leave.
24. The Respondent produced the Claimants leave records for 2013, 2014, 2015 and 2016. The records show that any accrued leave were commuted and paid to the Claimants.

25. The Court finds the claim for leave without foundation.

Conclusion and Orders

26. From the foregoing, the Court finds and declares

(i) The Claimants were on fixed-term contracts.

(ii) The contracts expired by effluxion of time and therefore there was no unfair termination of employment.

(iii) The Claimants outstanding leave were paid for in cash.

27. The Cause(s) are dismissed with costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 24th day of February 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimants Mr. Ouma/Ms. Otieno instructed by Odhiambo Ouma & Co. Advocates

For Respondent Ms. Onsongo instructed by Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura