



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/22/2019

CITATION: VS KORIAN DAVID ECHUMAN AND THE COUNTY GOVERNMENT OF TURKANA AND 2 OTHERS

JUDGMENT

1. The 1st Claimant herein (Reuben Ebei) pleaded that by a contract dated 20th March, 2014 he was employed as Director, Procurement and Supply Chain Management. He held the position 23rd March, 2015 when the 3rd respondent unlawfully and without justifiable cause removed him from office and replaced him with one Richard Oboo Omoni. The claimant challenged the removal in Court and on 1st November, 2016 the honourable Court sitting at Nakuru in cause number 289 of 2016 ordered his reinstatement. The Claimant was accordingly reinstated on 6th February, 2017.
2. On 21st January, 2019 the Claimant received a notice of end of contract with effect from 21st March, 2019.
3. The second Claimant Koriang David Echuman stated that he was employed by the respondent as County Information Communication Technology Officer on 20th March, 2014. The appointment was on permanent and pensionable basis. He held the position until 21st January, 2019 when he received a notice of end of contract from the County officer with effect from 21st March, 2014.
4. Both the Claimant averred that the termination of the contract was without any just or lawful cause. Further that the letter of termination of contract was not from the appointing authority. The Claimants also alleged that no valid reason was given for the termination of their contracts.
5. The respondents in response to the 1st Claimant's averments stated among others the Claimant was or their employee hired on five-year contract from 21st March, 2019.
6. The respondent further stated that the proceedings in Nakuru ELRC cause No 289 of 2016 merely related to the 2nd respondent's decision to transfer the Claimant to Ministry of Education, Culture and Social Services and the said decision was rescinded on 11th November, 2016 and the Claimant retained in his former position.
7. The respondent denied breaching any terms of the Claimant's contract of service and further averred that the Claimant's contract of service was a fixed term contract which expired and lapsed naturally by effluxion of term.
8. The respondent further stated that the parties knew exactly when the contract was set to lapse and there was never any agreement between the parties regarding renewal neither was there any clause in the contract providing for automatic renewal.
9. Further the Claimant was given two months' notice prior to effluxion of his contract. The respondent further averred that in the Human Resource Policies and Procedures Manual for Public Service there is no requirement for communicating reasons for non-renewal of contracts for officers.
10. Referendum delegations of duties the respondent pleaded that pursuant to section 45(4) of the County Government Act any functions of the 2nd respondent could be delegated to 3rd respondent who in accordance with Turkana County Government structure is the County Chief Officer dealing with public service.
11. With regard to the 2nd Claimant, the respondent repeated the averments in respect of the 1st Claimant and additionally stated that the Claimant was on five-year contract with effect from 20th March, 2019.
12. At the hearing the 2nd Claimant testified first and stated that he relied on witness statement dated 7th February, 2020 as his evidence in Chief and also his documents filed with the claim.
13. According to him he knew for the first time that his contract was for five years when he was issued with end of contract note.

14. In cross-examination he stated that he was issued with a letter of appointment and that he was not conversant with the PSC HR policy manual/. He however stated that he was aware employment in public service could be permanent and on fixed term contract. He further stated that he took no step when he received the end of contract note. He further stated that there was no provision for gratuity in his contract he however received gratuity. He did not know the purpose of the payment.
15. The Claimant further stated that he was a member of the respondent's pension scheme and the County Provident fund. He however admitted he did not produce any document to show he was a member of the pension scheme, The Claimant denied knowledge of IPPD data capture.
16. He only heard about it. He provided his personal information when he got employed. He saw the details as captured but his position was not properly captured in the date sheet. He further stated he could see and of contract on the document. It was 21st March, 2019. He denied knowledge of what contract meant.
17. The Claimant further stated he filed an application and suit before Radido J and signed the supporting affidavit and in the affidavit, he stated that his contract was for five years. According to him they were misled by their previous counsel.
18. The 1st Claimant on his part stated that he recorded a witness statement on 7th February, 2020 which he sought to adopt as his evidence in chief. He also adopted his bundle of documents filed with the claim.
19. According to him, he was employed as Director Supply Chain Management and was issued with an appointment letter. The letter did not specify time. He assumed his appointment was permanent and pensionable.
20. In cross-examination that his contract was for five years. According to him he received his termination letter did nothing. He waited for further instructions. He cleared later when he was told to stop working. It was his evidence that he was never given end of contract evaluation form and that in 2015 he was removed from office but was returned through a Court order. He further clarified that he was transferred and not removed.
21. According to the Claimant he was given two months' notice of termination. He was called by his immediate boss and told to go home and wait to be called. The Claimant further stated he did not make any application for renewal of his contract. He further stated that he got his gratuity and that it was paid through his accounts.
22. The respondent's witness Ms Fransisca Bartoo stated that she was the Secretary /CEO Turkana Public Service Board. She was not working for the respondent when the Claimant's issue arose but that she reviewed documents. She also reviewed the witness statement written by one Esther which she adopted as here evidence in Chief.
23. In cross-examination she stated that she looked at the Claimants letters of appointment and they indicated that the Claimants were appointed on contract. The letters did not mention five years. It had evidence that there was no obligation to give reason for the non-renewal of contract. Ms Bartoo further stated that Senior officers from Job group Q upwards were on contract. This was the standard practice.
24. In re-examination she stated that the respondent's HR Manual provides for five years contract. Section B(2) thereof. The Claimants herein allege that the respondent s unfairly terminated their service while the respondent has maintained that it never terminated the service of the Claimants and that their service terminated through effluxion of time since they were on fixed term contracts. The Claimant's however denied they were on a fixed term contract and that their letters of appointment never indicated they were on a fixed term contract.
25. The 1st Claimant's letter of appointment dated 20th March, 2014 and the 2nd Claimant's dated same date provides at page 2 thereof under the Clause" Terms of Service" as contract.
26. The 2nd Claimant further stated that they filed Nakuru ELRC cause number 289 of 2016 challenging their transfer and that in the affidavit in support of the application and suit they stated that they were appointed on contract. The Claimant however claimed they were misled by their advocate then on record which is why they changed him.
27. The IPPD data capture sheet which was exhibited by the respondent and was never disputed by the Claimants showed that their terms of appointment was "local contract and not pensionable. Both Claimants conceded to receiving gratuity payment yet they denied knowledge of what the payment was for.
28. From the foregoing it cannot be gainsaid that the Claimants knew that they were appointed by the respondent on fixed term contracts.
29. An employee on a fixed term contract has no automatic right of renewal of contract. Renewal is usually through mutual consent of the parties and subject to the continuing need for such employees and their performance. The court is of honest opinion that the claimants are not being candid when they claim that all along they never knew that their appointments were on fixed term contracts. They themselves deponed on oath in Nakuru ELRC cause no 289 of 2016 that they were hired on contract by the respondent.
30. It is lack of candour on their part to claim that in so deponing they were misled by counsel. Even if this was so, what about their appointment letters which stated that their terms of engagement were on contract? Further, the Claimants having received and put to personal use, the gratuity paid by the respondent upon expiry of their contracts cannot be heard to turn around and claim they were hired on permanent and pensionable terms. No employee on permanent and pensionable is entitled to any gratuity.
31. In conclusion the Court finds the Claim by the Claimants without merit and hereby dismisses the same with costs.

32. It is so ordered.

Dated at Eldoret this 15th day of March, 2021

Delivered at Eldoret this 15th March, 2021

SIGNED BY: HON. JUSTICE J. N. ABUODHA

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

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