



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 259 OF 2018

DOMNIC OSIMBO & 94 OTHERS.....CLAIMANTS

V

COUNTY GOVERNMENT OF KISUMU.....1st RESPONDENT

COUNTY PUBLIC SERVICE BOARD,

KISUMU.....2nd RESPONDENT

JUDGMENT

1. The 95 Claimants instituted these legal proceedings against the Respondents on 12 July 2018, alleging unfair termination of employment on 2 July 2018.

2. The Claimants sought the following remedies (inelegantly drafted):

(i) An order of permanent injunction restraining the Respondents, agents, servants from recruiting replacing the Claimants (sic) from recruiting replacing the Claimants from their initial positions to employment until the Claimants are confirmed as permanent and pensionable employees.

(ii) It is now prayed that this Honourable Court be pleased to find unlawful termination and (sic) continued withholding of the Claimants dues by the Respondents to be unjustified, unlawful, unfair, wrongful, and illegal. (sic) be pleased to order the Respondent to pay the Claimants statutory entitlements.

(iii) It is humbly prayed that this Honourable Court be pleased to order for reinstatement of employment and confirmation of Claimants as permanent and pensionable employees.

(iv) The Court be pleased to grant special damages for 12 months for unlawful termination.

(v) The Court be pleased to grant special damages as per paragraph 18(a) to 18(e).

(vi) In addition, this Honourable Court is prayed to award costs of this suit to be borne by the Respondent.

3. On 14 August 2018, the Deputy Registrar ordered the parties to meet under the leadership of County Labour Officer to ascertain the arrears due to each of the Claimants.

4. The County Labour Officer was directed to file a report with the Court. The Report was filed on 13 December 2018. The County Labour Officer noted that some of the arrears had been settled.

5. On 14 February 2019, the acting County Secretary filed an affidavit in Court, deposing that all arrears had been paid (April 2018 to June 2018).

6. Because the parties could not agree on whether all arrears had been paid, the Court directed that the Cause proceeds to a hearing. The Court ordered the Respondents to file a Response (the Response was not on file).

7. When the Cause was called for hearing on 24 November 2020, the parties agreed that the dispute be determined on the basis of the record and submissions to be filed.

8. The Claimants filed their submissions on 29 December 2020, while the Respondents filed their submissions on 15 January 2021.

9. The Claimants identified 3 Issues for determination:

- (i) Whether the termination and/or summary dismissal of the Claimants was fair?
- (ii) Whether the Claimants should be placed on permanent terms and conditions of service?
- (iii) What is appropriate redress?.

10. The Respondents, on their part, raised 3 Issues:

- (i) Whether the Claimants' employment was a contract of service.
- (ii) Whether the termination was fair and just?
- (iii) Are the Claimants entitled to the prayers sought?

Unfair termination of employment

11. The Claimants acknowledged that they were on 1-year fixed-term contracts, which were renewable. They asserted that they were dismissed verbally on 2 July 2018 by the County Executive Committee member for Finance.

12. The Respondents contended that they had not dismissed the Claimants but had opted not to renew the contracts upon expiry (on different dates) because revenue collection had been automated.

13. Under section 47(5) of the Employment Act, 2007, the Claimants had a low evidential threshold to show that an unfair termination of employment had occurred.

14. In the pleadings and the witness statement the Claimants did not disclose when their respective contracts expired and whether they continued to serve beyond the expiry dates.

15. The Court of Appeal in *Registered Trustees of the Presbyterian Church of East Africa & Ar v Ruth Gathoni Ngotho-Kariuki* (2017) eKLR addressed the question of whether a failure to renew a contract amounted to unfair termination of employment (or whether a renewal clause could create a legitimate expectation of renewal of the contract).

16. The Court of Appeal had this to say in paragraph 22

We concur with the trial Judge to the extent that as per the contract of service, the appellants' were required to inform the respondent of their intention of whether they would renew her contract 3 months prior to the expiry of the same. However, we respectfully disagree that the failure to do so amounted to an automatic renewal. Why do we say so? It is clear from the wording of the above clauses as well as the hospital's human resource manual that the renewal was subject to the mutual consent of the respondent as the employee and the appellants' as the employer. To hold otherwise would be tantamount to holding at servitude a party who wishes to exercise his/her right of termination in terms of the contract as observed by this Court in *Minnie Mbue vs. Jamii Bora Bank Limited* (2017) eKLR

17. And at paragraph 29

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.

18. The contracts herein did not place any obligation on either party to signify in advance a desire to renew.

19. On the material on record, the Court finds it is more probable that the contracts expired by effluxion of time and the County Executive Committee member were only informing the Claimants of a *fait accompli*.

20. The Court, therefore, concludes that unfair termination of employment does not arise.

21. Compensation, damages and salary in lieu of notice are thus not available to the Claimants.

Special damages

22. The Claimants sought special damages itemised as salaries from January 2018 to the date of judgment and transport allowance.

23. These should have been proved strictly like any other special damages, a task the Claimants did not achieve.

Conclusion and Orders

24. In consideration of the above, the Court finds no merit in the Cause. It is dismissed with costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 3rd day of March 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimants Mwamu & Co. Advocates

For Respondents Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chrispo Aura