



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 16 OF 2020

ONDIEKI GISORE JOASH.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF NYAMIRA.....1st RESPONDENT

GOVERNOR, COUNTY OF NYAMIRA.....2nd RESPONDENT

COUNTY PUBLIC SERVICE BOARD, NYAMIRA.....3rd RESPONDENT

JUDGMENT

1. Ondieki Gisore Joash (the Claimant) was offered an appointment as a Political Advisor in the Office of the Governor, Nyamira through a letter dated 30 August 2016 by the County Public Service Board (the Board).
2. The contract was to lapse on 31 August 2017.
3. On 30 August 2017, the Board offered the Claimant another contract which was to lapse on 31 August 2022.
4. However, on 29 August 2019, the Board wrote to the Claimant informing him that his contract would expire on 30 August 2019.
5. On 6 January 2020, the Chief Officer, Public Service Management, wrote to the Chairman of the Board to notify him that the Claimant's contract was to lapse on 31 August 2022, and therefore the separation was premature.
6. The Chief Officer requested that the Claimant be reinstated to office.
7. The Claimant was not reinstated, and on 14 February 2020, he sued the Respondents alleging unfair termination of employment and breach of contract.
8. The Respondents filed a Response on 30 April 2020, in which it was averred that the letter dated 30 August 2017 was issued in error and the error had been rectified through a letter dated 9 October 2017.
9. The Cause was heard on 15 March 2021. The Claimant and the Chairperson of the Board testified.
10. Pursuant to Court directions, the Claimant filed his submissions on 15 April 2021. The Respondents filed their submissions on 17 May 2021.
11. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

12. It is not in dispute that the Board offered the Claimant a contract from 1 September 2017 to 31 August 2022.
13. The Claimant accepted the offer.

14. On 9 October 2017, the Board wrote to the Claimant informing him that the contract was to run for 2 years (alteration of a contract term).
15. The Claimant accepted the alteration of the term by appending his signature to the offer.
16. On 26 August 2019, the Claimant wrote to the Governor, requesting the extension of his contract.
17. The Governor did not respond to the request.
18. Instead, the Board wrote to the Claimant on 29 August 2019, notifying him that the contract would expire the next day.
19. In Court, the Claimant contended that the letter of 9 October 2017 had been overtaken by events as the Board had issued to him a contract dated 30 September 2019, reiterating that the contract was to expire in 2022.
20. The Claimant also relied on a copy of a Memo dated 15 August 2019 from the Chief of Staff to the Governor, attaching a list of contract employees serving in the Governor's office and letters by the Chief Officer, Public Service Management.
21. The Claimant did not produce in Court the contract dated 30 September 2019.
22. The Respondents urged the Court to dismiss the Claimant's case because he had come to court with unclean hands by failing to disclose that he had signed the offer letter dated 9 October 2017, altering the term of the contract.
23. The terms of employment can be gathered from the primary contractual documents or secondary documents.
24. In the case at hand, there is a primary document dated 9 October 2017, setting out the tenure of the Claimant's contract as 2 years. The Claimant appended his signature to the offer letter.
25. In the view of the Court, the letters from the Chief Officer and Chief of Staff (dated 15 August 2017 and 29 August 2017) must yield to the offer alteration letter of 9 October 2017, which the Claimant accepted.
26. The Court takes comfort in that conclusion on the ground that the Claimant was aware of the tenure of the contract, and that is why he sought for extension of the contract through his letter of 26 August 2019.
27. The Court finds that case of the Claimant was not one of unfair termination of employment. He did not prove as much as envisaged under section 47(5) of the Employment Act, 2007. In fact, he failed to disclose in his pleadings that he had appended his signature to an offer letter revising/altering the term of the contract to 2 years.

Conclusion and Orders

28. In consideration of the foregoing, the Court finds no merit in the Cause, and it is dismissed. No order on costs.
29. The Court regrets that the judgment could not be delivered as earlier scheduled due to other official engagements.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 19TH DAY OF NOVEMBER 2021.

RADIDO STEPHEN, MCIARB

JUDGE

APPEARANCES

FOR CLAIMANT MR OBAE INSTRUCTED BY K.O. OBAE & CO. ADVOCATES

FOR RESPONDENTS MR NDEGE INSTRUCTED BY NYACHIRO NYAGAKA & CO. ADVOCATES

COURT ASSISTANT CHRISPO AURA