



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CIVIL APPEAL NO 8 OF 2019

EUNICE ACHIENG OCHOLA.....1ST APPELLANT

BRENDA ANYANGO.....2ND APPELLANT

EMMA CHITERI KHAMALA.....3RD APPELLANT

VS

COAST CLAY WORKS LIMITED.....RESPONDENT

(Appeal from the judgment of Hon E.K Makori, CM dated 3rd May 2019 in Mombasa CMCC No 21 of 2018)

JUDGMENT

1. The Appellants (Claimants in the lower court) went to the Chief Magistrate's Court in Mombasa seeking compensation for what they termed as unlawful and unjust dismissal.
2. **Hon E.K Makori, CM** heard the Appellants' claim and by his judgment dated 3rd May 2019 dismissed it in its entirety. Being dissatisfied with the judgment by the trial court, the Appellants filed the present appeal.
3. In their Memorandum of Appeal dated 16th May 2019 the Appellants raise the following grounds:
 - a. That the learned Magistrate erred in law and fact in dismissing the Appellants' claim;
 - b. That the learned Magistrate erred in law and fact in not considering the oral evidence by the Appellants adduced in court regarding the claim in question;
 - c. That the learned Magistrate erred in law and fact by failing to consider the documentary evidence and the submissions presented by the Appellants in considering the claim in question;
 - d. That the learned Magistrate's judgment went against the weight of the need to dispense justice with fairness and was thus bad in law.
4. This is a first appeal and the Court is therefore obligated to reconsider and re-evaluate the evidence adduced before the trial court and draw its own conclusions, bearing in mind that I have had no chance to hear the witnesses first hand (see *Peter M. Kariuki v Attorney General [2014] eKLR* and *Easy Coach Bus Services & another v Henry Charles Tsuma & another (suing as the Administrators and Personal Representatives of the Estate of Josephine Weyanga Tsuma (Deceased)[2019] eKLR)*).
5. In his judgment dated 3rd May 2019, the learned trial Magistrate concluded as follows:

“In the instant claims, the termination was on 31 March 2015 as per the agreement. No notice was required for the automatic termination and therefore no salary in lieu thereof. All allowances too had been calculated and duly paid.

The claims by the claimants are therefore not sustainable and are hereby dismissed.”

6. This appeal turns on the nature of the Appellants' contracts of employment.
7. The Appellants submit that their employment was unlawfully and unfairly terminated contrary to the provisions of the Employment Act.
8. The Respondent submits that the Appellants were employed on fixed term monthly contracts renewable subject to availability of work. The Respondent further submits that the Appellants' contracts determined on 31st March 2015.
9. The basic principle regarding fixed term contracts is that they are self- executing and carry no automatic right of renewal. In this regard, I concur with holding my brother **Rika J** in **Margaret A. Ochieng v National Water Conservation and Pipeline Corporation [2014 eKLR]** that to expect automatic renewal of fixed term contracts would defeat the very purpose of this category of contracts and stifle the employer's prerogative to regulate employment terms.
10. In support of its case, the Respondent filed monthly employment contracts issued to the Appellants. Clause 6 of these contracts reads:

“The company does not guarantee your permanent employment at the expiry of this contract. Your continued engagement on this contract will depend on both availability of work and your continued good performance.”
11. From this clause, it is clear that the Appellants were engaged on the basis of fixed term contracts with no automatic provision for renewal.
12. The last such contracts were issued to the Appellants on 1st March 2015 and were to terminate on 31st March 2015, which is the termination date given by the Appellants in their Memorandum of Claim and their testimony before the trial court.
13. In light of this, I agree with the learned trial Magistrate that the Appellants employment came to an end by effluxion of time and they could not therefore sustain a claim for unlawful and unfair termination of employment.
14. I further agree with the learned Magistrate that there was no requirement for termination notice and that all dues under the contract were duly paid to the Appellants.
15. The result is that this appeal is devoid of merit and is accordingly dismissed.
16. Each party will bear their own costs.
17. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 12TH DAY OF MARCH 2020

LINNET NDOLO

JUDGE

Appearance:

Miss Okeyo for the Appellant

Mr. Mwakireti for the Respondent