



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2472 OF 2016

JULIUS KURIA WANGARI.....CLAIMANT

VERSUS

PREMIER BAG & CORDAGE LTD.....RESPONDENT

JUDGMENT

1. The Claimant instituted these proceedings against the Respondent on 30 November 2016 alleging unfair termination of employment and breach of contract.

2. The Respondent filed a *Response* on 18 April 2017 contending that the Claimant's contract expired through effluxion of time. It was also pleaded in the Response that the Claimant was a casual employee from 1993 to 1999 serving on renewable contracts.

3. When the Cause came up for hearing on 18 February 2020, the Respondent and its advocate on record were not present.

4. Since there was an affidavit of service attesting to service and acknowledgement of a hearing notice upon the Respondent's advocate on 2 December 2019, the Court being satisfied with the service, allowed the hearing to proceed.

5. The Claimant testified and produced exhibits. The Claimant's submissions should have been filed by 6 March 2020 but were not on record by this morning.

Unfair termination of employment

6. The Claimant admitted that by the time of separation, he was on a fixed-term contract. However, he did not produce a copy of the contract in Court.

7. Nevertheless, the Claimant produced a copy of a letter dated 29 December 2014 from the Respondent and advising him that his contract would not be renewed upon expiry on 28 January 2015.

8. The reasons given for the decision not to renew the contract included *unsatisfactory performance*.

9. In terms of section 47(5) of the Employment Act, 2007, the Claimant was required to demonstrate that an unfair termination of employment had occurred. An unfair termination of employment may be shown by satisfying the Court that the *written notice* contemplated by section 35(1)(c) of the Employment Act, 2007 was not given, or that a hearing as required by section 41 of the Act was not conducted.

10. In the case at hand, there is evidence that the Claimant's contract expired and the Respondent opted not to renew it.

11. The legal question, therefore, is whether the failure to renew the contract amounted to an unfair termination of employment.

12. It cannot be disputed that although the Respondent gave the underlying reason for failure to renew the contract as *unsatisfactory performance*, it did not end the contract to prematurely but let it run its agreed course.

13. In the view of the Court, and the Court so finds, the Claimant did not prove that his case was one of unfair termination of employment as it was not brought to an end prematurely.

14. Compensation and pay in lieu of notice are therefore not remedies available to the Claimant.

Service gratuity

