



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 192 OF 2020

DEREK WANGAKI OKOVA.....CLAIMANT

VERSUS

KENYA PIPELINE COMPANY LTD.....RESPONDENT

RULING

1. Before the Court is a Motion dated 11 May 2020 by Derek Wangaki Okova (applicant) seeking orders

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3. THAT pending the hearing and determination of this application and main suit, the Honourable Court be pleased to issue an order restraining the Respondent company whether by themselves or their representatives, servants, agents and/or assigns from terminating its contract with the Claimant.

4. THAT pending the hearing and determination of this application and main suit, the Honourable Court be pleased to issue an order compelling the Respondent Company to extend the Claimant's contract to full terms.

5. THAT this Court, pending the hearing and determination of the Claimant's application, do issue an injunction restraining the Respondent herein and/or their agents or servants from alienating, selling, transferring and/or attempting to sell by way of auction or otherwise or in any way whatsoever dealing with the Claimant's property known as Maisonette Number 12 in Chesterhill erected on L.R. No. 337/969 situate at Athi River in Machakos County.

6. THAT pending the hearing and determination of this suit, the Respondent by themselves, their servants, agents or otherwise howsoever be restrained from interfering with the Claimant's/applicant's quiet and peaceful enjoyment of his property situated described as Maisonette Number 12 Chesterhill erected on L.R. No. 337/969 situate at Athi River in Machakos County.

7. THAT this Honourable Court be pleased to grant such other or further orders as it may deem fit to grant.

8. THAT costs of this application and suit be met by the Respondent.

2. When the Motion was placed before the Court *ex-parte*, it declined to issue any orders and directed that it be served.

3. On 26 May 2020, the Court directed the parties to file/exchange affidavits and submissions.

4. The Respondent filed a replying affidavit in opposition to the Motion on 10 July 2020.

5. The applicant filed his submissions on 3 August 2020 and an *Amended Memorandum of Claim* on 4 August 2020 while the Respondent filed its submissions and authorities on 28 August 2020.

6. The Court has considered the Motion, affidavits and submissions.

7. The applicant, the Operations Manager with the Respondent at the material time, was on a 3-year fixed term but renewal contract from 14 February 2017. On 30 July 2019, the applicant applied for the renewal of the contract.

8. In order to conclude the evaluation of the applicant's performance under the ending contract, the Respondent's Board met on 13 February

2020 and decided to renew the contract for 3-months (the contract was to expire on 14 February 2020).

9. In terms of the Respondent's Human Resource Policies, the Human Resource Committee of the Board met on 16 April 2020 to discuss the renewal after consideration of a report from the Management.

10. The Committee, after reviewing the applicant's performance resolved to recommend to the Board that the contract should not be renewed.

11. On 14 May 2020, the Respondent's Managing Director wrote to the applicant to notify him that the Board Human Resource Committee had resolved that the contract should not be renewed.

12. Upon receipt of the decision, the applicant moved the Court and he stated the Issues in Dispute as

- (i) Constructive renewal of the Claimant's employment contract.
- (ii) Non-renewal of an employment contract.
- (iii) Violation and breach of the employment contract.
- (iv) Violation and breach of Articles 41, 47 and 50 of the Constitution of Kenya.

13. Filed together with the Memorandum of Claim was the Motion already referred to in which the applicant contended that he had been verbally informed the Board had approved his request for renewal of contract and that the failure to renew his contract while those of other Managers were renewed was discriminatory; that the non-renewal was influenced by the Managing Director with whom he had a history of bad blood; that the attempt to re-evaluate his performance was in bad faith and driven by malice and that he had a legitimate expectation that the contract would be renewed.

14. The Respondent, in opposing the application asserted and submitted that in terms of the Human Resource Policy, it was the role of the Board Human Resource Committee to evaluate and deliberate on the request for renewal of the applicant's contract and that the Committee evaluated the request and resolved not to renew the contract.

15. Considering that what is before the Court is essentially a dispute about the non-renewal of an employment contract and whether the same would amount to unfair termination of employment and further considering the Court of Appeal decision in *Registered Trustees of the Presbyterian Church of East Africa & Ar v Ruth Gathoni Ngotho- Kariuki (2017) eKLR*

that fixed-term contracts carry no rights, obligations, or expectations beyond the date of expiry.....

since the (R)espondent's contract came to an end by effluxion of time any claim for wrongful termination could not be maintained.

the Court declines to grant any of the orders sought by the applicant.

16. The Court also finds no threat or breach of contract on the part of the Respondent in respect to the loan/mortgage which was extended to the applicant.

17. The Motion dated 11 May 2020 is dismissed with costs in the cause.

Delivered through Microsoft teams, dated and signed in Nairobi on this 23rd day of October 2020.

Radido Stephen

Judge

Appearances

For applicant Mr. Onyony instructed by Onyony & Co. Advocates

For Respondent Ms. Ngige instructed by Mohammed Muigai LLP Advocates

Court Assistant Judy Maina/Lindsey