

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 482 OF 2017

CATHERINE WANJIRU.....CLAIMANT

VERSUS

BOARD OF AFYA YETU INITIATIVE.....RESPONDENT

JUDGMENT

1. The Claimant herein sued the Respondent for the dismissal from employment. She averred that the dismissal was unlawful as no reasons were given for the dismissal. She sought compensation for the dismissal, payment of 3 month's salary in lieu of notice and general damages, emoluments/contingencies totaling to Kshs. 1,387,035/- as well as damages for lost earning from 7th January 2015 to date at the rate of 92,469/- and an annual increment of 5% of the salary per annum. She also sought to be reinstated to her job as the General Secretary of the Respondent and as programme coordinator for the CBHIS project, costs of the suit an interest on the sums claimed.

2. The Respondent in its defence averred that the Claimant was serving as the acting team leader which position was part and parcel of her fixed term employment as programme coordinator with the Respondent which terminated by effluxion of time on 31st December 2014. The Respondent denied that the Claimant was a fully fledged Secretary General or that she worked until 7th January 2015. The allegations of wrongful and unfair dismissal were denied and that the suit was bad in law, misconceived and an abuse of the court process suitable for dismissal with costs.

3. The Claimant and the Respondent's witness Wilson Wang'ombe Wahome testified. She stated that she was an operations manager at a group of schools and that she was unlawfully dismissed by the Respondent who did not give her any notification of the intent to dismiss her while the Respondent's testimony was that the Claimant was not dismissed and her contract came to an end in December 2014. Submissions were filed by the parties and the Claimant submitted that she did not have a contract with the Respondent that was to expire on 31st December 2014. The Claimant relied on an email which was sent on 7th January 2015 confirming her termination. She cited the cases of **Michael Gitau Njoroge v Board of Management Afya Yetu Initiative [2015] eKLR** and **Dishon Kamau Muiruri v Kenya Revenue Authority [2015] eKLR**. She submitted that she was entitled to the remedies sought in the suit.

4. The Respondent submitted that the Claimant's contract ended on 31st December 2014 and since it was not renewed she had no valid claim as she was not dismissed from employment. The Respondent submitted that equity treats as done that which ought to be done and that the intention of the parties was a 2 year fixed term contract for the Claimant. The Respondent submitted that there was no obligation to renew a fixed term contract and cited the Court of Appeal decision in **The Registered Trustees De la Salle Christian Brothers t/a St. Mary's Boys Secondary School v Julius D. M. Baini [2017] eKLR**. The Respondent also submitted that there was no cause of action for the failure to confirm her to the position of General Secretary a position she was acting in. Reliance was placed in the case of **Henry Ochindo v NGO Co-ordination Board [2015] eKLR**. The Respondent asserted that the claim for damages has no legal basis and the claim for reinstatement does not lie as the Claimant has secured employment elsewhere.

5. There was a contract exhibited by the Respondent which was from 1st January 2013 till 31st December 2014. It was a 2 year contract issued to the Claimant. It was not signed by the Claimant but had been signed by the Respondent's representative on 1st January 2013. It was not averred or even shown that this contract was renewed. The Claimant was therefore not dismissed as she alleged since by January 2015 there was no contract. Constructive dismissal occurs when there is a change of the employee's conditions of work to force their resignation. There was no constructive dismissal in this case as the email she relies on speaks of the non-renewal of her contract. The foregoing is clear indication that the case is only fit for dismissal and the suit herein is dismissed with no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 17th day of January 2019

Nzioki wa Makau

JUDGE

I certify that this is a true

copy of the original

DEPUTY REGISTRAR