



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 791 OF 2014

KATIWA MUTHOKA

CLAIMANT

v

ENGLISH PRESS LIMITED

RESPONDENT

JUDGMENT

1. Katiwa Muthoka (Claimant) commenced legal action against English Press Ltd (Respondent) on 14 May 2014 alleging that the Respondent unfairly terminated his employment on 21 January 2013.
2. The Respondent filed its *Response* on 10 December 2015 denying unfair termination of employment and contending that the Claimant was on a fixed term contract which lapsed and was not renewed.
3. The Cause was heard on 6 November 2018 when the Claimant testified and closed his case and on 4 February 2019 when the Respondent's Senior Human Resources Officer testified.
4. The Claimant's submissions were not on file by this morning while the Respondent filed its submissions on 26 February 2019.
5. The Court has considered the pleadings, evidence and submissions and identified the Issues for determination as
 - (a) Whether the Claimant's contract lapsed or was unfairly terminated
 - (b) Whether the Claimant had accrued leave by time of separation and
 - (c) Appropriate remedies/orders.

Expiry or unfair termination of contract

6. The Claimant was issued with various contracts in the course of employment and the last contract before separation was signed on 29 December 2012. It was to run from 1 January 2013 to 31 January 2013.
7. About 10 days before the expiry of the contract that is on 20 January 2013 the Respondent issued to the Claimant a *show cause notice*. The notice requested the Claimant to make representations on 2 allegations, first for having ignored instructions issued by a supervisor and secondly, arguing and assaulting the supervisor.
8. On 21 January 2013, the Respondent summoned the Claimant to appear before a Disciplinary Committee to answer to the allegations. The hearing took place on 22 January 2013.
9. The Claimant responded to the show cause in writing on 22 January 2013.
10. According to the minutes of the hearing, an observer attended the proceedings.
11. The minutes, in the conclusion show that the committee agreed that Mr. Kitiwa was guilty of first not obeying instructions from the supervisor, secondly threatening violence and/or intending to fight and thirdly behaving in a manner insulting to the supervisor which all amount to gross misconduct. The Committee agreed that the employee be disciplined for gross misconduct. The Committee however realised it was only 5 days to completion of the employee's fixed term contract and decided to let the employee complete his term.
12. According to the Court, it is not in doubt that the Committee completed the disciplinary process and found the Claimant culpable but did

not mete out a sanction or penalty because the Claimant's contract was due to expire shortly.

13. The question therefore arises whether the Respondent was under an obligation to communicate to the Claimant its decision on his guilt and/or a sanction or penalty before the expiry of the contract.

14. The Court of Appeal in *Amatsi Water Services Company Limited v Francis Shire Chachi* (2018) eKLR stated that

It is our finding, in all the circumstances, that the contract was not terminated before its expiry. It ended by effluxion of time before any communication on the disciplinary process envisaged in the letter could take effect.

15. Although not exactly in point, this Court is of the view that the expiry of the contract before the communication of the decision of the Disciplinary Committee frustrated the need to inform the Claimant of the outcome/penalty, and because the Claimant served the contract up to its sun set, this was not a case of unfair termination of employment.

16. The payment of pay in lieu of notice and compensation do not therefore arise.

Accrued leave

17. The Claimant contended that he had not been granted leave for the 4 years he served the Respondent and in this respect he sought Kshs 43,796/-.

18. The Claimant was on fixed term contracts. The Respondent produced copies of pay slips May 2011, June 2011, November 2011, December 2011, November 2012 and January 2013 all indicating commutation of the leave days.

19. The Court therefore finds that the Claimant had no accrued/pending leave days by end of contract.

Conclusion and Orders

20. From the foregoing, the Court finds no merit in the Cause herein and orders that it be dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 15th day of March 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Mulaku instructed by Namada & Co. Advocates

For Respondent Mr. Masese, Senior Legal Officer, Federation of Kenya Employers

Court Assistant Lindsey