



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2067 OF 2014

SAMUEL GITAU KINYANJUI.....CLAIMANT

VERSUS

CENTRE FOR HEALTH SOLUTIONS KENYA....RESPONDENT

JUDGMENT

1. Samuel Gitau Kinyanjui (Claimant) sued the Centre for Health Solutions Kenya (Respondent) on 18 November 2014 alleging breach of contract and unfair termination of employment.
2. In a Response filed on 25 February 2015, the Respondent contended that the contract was for a fixed period of time and therefore expired by effluxion of time.
3. The Cause was heard on 9 May 2018. The Claimant and the Respondent's Director Finance and Administration testified.
4. The Claimant filed his submissions on 23 May 2018 while the Respondent filed its submissions on 7 June 2018.
5. The Court has considered the pleadings, evidence and submissions.

Unfair termination or lapse of contract

6. The appointment letter issued to the Claimant had inconsistency as to its duration.
7. In the relevant part, it provided the Centre for Health Solutions-Kenya is pleased to offer you one year renewal employment contract for the position of **CHIEF OF PARTY** with effect from **23rd SEPTEMBER 2013** up to and including **29th AUGUST 2014**.
8. In terms of the first part of the clause, the contract was to last up to 22 September 2014, if it were to run for one year.
9. The second part of the contract however had a definite expiry date, which fell about one month short of the one year. The Claimant insisted on compliance with the first part of the clause while the Respondent contended it acted pursuant to the second part of the clause.
10. The Respondent informed the Claimant of the non-renewal of the contract through a letter dated 29 August 2014.
11. In an attempt to demonstrate that the contract was unfairly terminated before its end date, the Claimant drew the attention of the Court to the Respondent's *Human Resource Manual* which provided that contracts would run for 12 months from date of initiation and that employees would be hired on 12 months contracts.
12. The Respondent on the other hand maintained that general contractual provisions could not triumph over or override specific contractual provisions.
13. It was also contended that the Claimant had pleaded that the contract was to end on 29 August 2014 (that submission cannot be correct in view of paragraph 4 of the Memorandum of Claim).
14. Considering the vagueness/inconsistency in the *contract letter* as to the duration/end date, and in further consideration of the clauses in the Respondent's *Human Resource Manual*, the Court is of the view that the Claimant's contract was to run for one calendar year, and therefore should have lapsed on or around 22 September 2014. The Claimant was entitled to benefit from the more generous provision.

15. Having reached that conclusion, the Court finds that the provisions of sections 35(1)(c) as read with sections 41, 43 and 45 of the Employment Act, 2007 became implicated, and not the provisions on redundancy as urged by the Claimant as no evidence on redundancy was led.

16. Because the Claimant was not given written notice as envisaged by section 35(1)(c) or afforded an opportunity to be heard as contemplated by section 41 of the Act, the Court concludes that there was procedural unfairness in the separation.

Breach of contract

Severance pay

17. Severance pay is ordinarily paid in cases of redundancy. Clause 8.7.6 of the *Human Resource Manual* provided for payment of either gratuity or severance pay.

18. The Claimant was paid gratuity, and therefore the Court finds no breach of contract in failure to pay severance pay.

Remedies

Leave and gratuity

19. The Claimant was paid in lieu of pending leave and gratuity while the Cause was pending, and therefore nothing turns on these heads of claims.

Pay in lieu of notice

20. With the finding that the separation was unfair, and considering section 35 of the Employment Act and the clause on separation, the Court finds that the Claimant is entitled to the equivalent of 1 month salary in lieu of notice (basic pay was Kshs 635,920/- per month).

Compensation

21. Compensation is a discretionary remedy.

22. The Claimant served for slightly under one year and because of the length of service, the Court will award the equivalent of 1 month gross salary as compensation.

Conclusion and Orders

23. The Court finds and holds that the Claimant's contract was unfairly terminated and awards him and orders the Respondent to pay him

(a) Pay in lieu of notice	Kshs 635,920/-
(b) Compensation	Kshs 695,865/-
TOTAL	Kshs 1,331,785/-

24. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 29th day of June 2018.

Radido Stephen

Judge

Appearances

For Claimant Ms. Bonyo instructed by Obura Mbeche & Co. Advocates

For Respondent Mrs. Kiriba instructed by Hamilton Harrison & Mathews Advocates

Court Assistant Lindsey