



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 914 OF 2015**

**BETWEEN**

**GODFREY RAPANDO CHARLES ..... CLAIMANT**

**VERSUS**

**READY CONSULTANCY LIMITED ..... RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Kennedy Ngaira & Associates Advocates for the Claimant*

*Marende, Birir, Shimaka & Company Advocates for the Respondent*

**JUDGMENT**

1. The Claimant filed his Statement of Claim on the 8<sup>th</sup> December 2015. He states he was employed by the Respondent as a Machine Attendant, in the year 2011. He worked continuously until 28<sup>th</sup> September 2015 when the Respondent summarily dismissed him. His last salary was Kshs. 13,848. He states termination was without cause and notice. He was denied certain benefits during employment. He prays for Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 13,848.
- b) Public holidays worked for the period in employment at Kshs. 11,664.
- c) Annual leave pay over the same period at Kshs. 34,774.
- d) Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 166,176.
- e) Service pay at 15 days' salary for the 4 years of service at Kshs. 27,696.

Total...Kshs. 254,159.

f) Declarations that the Respondent engaged in unfair labour practices; that 6 months periodic contracts issued to the Claimant were unconstitutional; that the Claimant is deemed to have been in

permanent employment; and, that termination was unfair.

g) Interest from 2011.

h) An order that the Respondent pays the Claimant overtime for weekend and public holidays worked.

i) Damages and aggravated damages.

j) Costs plus interest.

2. From the outset, it must be noted some of the prayers are repetitious and others couched in unclear language.

3. The Respondent filed its Statement of Response on 18<sup>th</sup> March 2015. It is conceded the Claimant was employed by the Respondent on periodic contracts from 2011. The Respondent did not terminate his contract. He was to be granted a new contract to work for a different Client of the Respondent. The Respondent is an outsourcing Company. The Claimant failed to present himself to take up a new contract. The Respondent prays the Claim is dismissed with costs to the Respondent.

4. The Claimant gave evidence, and closed his case, on 10<sup>th</sup> November 2016. The Respondent applied, and with the concurrence of the Claimant was allowed, to adopt its Witness Statement and Documents on record as its evidence, and close its case. Proceedings therefore closed on 10<sup>th</sup> November 2016. The dispute was last mentioned on 23<sup>rd</sup> February 2017.

5. The Claimant testified he was assigned to work for Mombasa Polythene Bag Limited by the Respondent. He had various contracts of 6 months, renewed at every end. He was called to the Respondent's Office and told his last contract would not be renewed. He worked overtime and worked on public holidays without compensation. It is not true that he declined renewal and reassignment to another Client.

6. Cross-examined, he testified he has not sued Mombasa Polythene. He was told to report to Respondent's Office on 29<sup>th</sup> May 2015 upon expiry of his contract. He did so, and was told there was no more work. He was not paid terminal dues. There were different contracts of 6 months each.

7. Respondent's Human Resources Manager Ibrahim Bocha filed a Witness Statement on 18<sup>th</sup> March 2016. His position is that the Respondent received a complaint from its Client, Mombasa Maize Millers about the Claimant and other Employees assigned to that Client. The Client stated it was not willing to continue working with the Claimant and his Colleagues. The Respondent therefore informed the Claimant that his contract would not be renewed. He was asked to report to Respondent's Office for clarification but did not do so. The Respondent intended to transfer him to another Client. He was unavailable and therefore could not have a fresh contract. He was not summarily dismissed. He did not work on public holidays. He did not work overtime. Leave days were taken and paid for on pro-rata basis.

**The Court Finds:-**

8. The Claimant was employed by the Respondent Manpower Company. He was employed on 6 months' contracts, each renewed on expiry. This went on until 28<sup>th</sup> September 2015, when the Claimant states he was summarily dismissed, while the Respondent states the Claimant failed to report to its Offices for renewal of the contract and reassignment to another Client. It is not clear which Client the Claimant worked for. He mentioned a Company called Mombasa Polythene Bag Limited, while Rocha referred to Mombasa Maize Millers Limited.

9. There are some prayers, which as noted at the outset are unnecessary. It is not necessary for the Court to declare that the Respondent engaged in unfair labour practices. It is not necessary to declare that the

Respondent engaged in unconstitutional conduct. In dispute is a contract of employment. The dispute can be resolved without drawing into the mix the Constitution of Kenya. If the contract was terminated unfairly, the Court can declare there was unfair termination, without having to make declarations about unfair labour practices. The Court similarly does not see where the law against discrimination at the workplace, comes in, in this dispute. There is nothing discriminatory, or otherwise unconstitutional, about the periodic contracts which the Claimant voluntarily agreed to work under.

10. The Respondent frequently renewed Claimant's contracts for 6 months. There would be legitimate expectation of renewal. There is however no ground for the Court to declare that the Claimant is deemed to have been employed as a permanent Employee. He was not in casual employment, to be considered for conversion under Section 37 of the Employment Act. Undeniable however, is that his periodic contracts were renewed frequently, and he was entitled to have legitimate expectation of renewal.

11. The prayers for '*overtime all weekends and public holidays worked*' under paragraph [g] of the Statement of Claim, regurgitates the prayer contained in paragraph 12 [b] in part. There are no details in any event given of overtime work done. There is no specific claim made for overtime. Prayer [g] is declined.

12. Paragraph [h] of the prayers reads that the Claimant is granted '*damages and aggravated damages.*' There is no explanation what these damages are sought to redress. There is under paragraph 12 [d] another prayer, inelegantly pleaded as '*12 months damages.*' The Court presumes this is a prayer for compensation for unfair termination. Why then plead '*damages and aggravated damages?*' The Court views this imprecision in pleading, as obscuring what merit there could be in the Claim. It makes the task of writing a Judgment arduous.

13. The Court understands the Claimant to be saying he expected renewal of his contract. He was told there would be no renewal. This amounted to unfair termination. The Respondent did not show that the Claimant was offered renewal and declined the offer, or made himself unavailable for the offer. There were no details given about complaints made against the Claimant either by Mombasa Maize Millers Limited or Mombasa Polythene Bags Limited. The Respondent did not show that indeed it intended to renew Claimant's contract. In the view of the Court non-renewal, granted the frequency and consistency in past renewals, created legitimate expectation in the mind of the Claimant, that there would be renewal after expiry of his last contract. Non-renewal amounted to unfair termination as concluded in ***Teresa Carlo Omondi v. Transparency International- Kenya [2017] e-KLR.***

14. ***The Claimant is granted the equivalent of 6 months' salary in compensation for unfair termination at Kshs. 83,088.***

15. ***He is allowed the prayer for 1 month salary in lieu of notice at Kshs. 13,848.***

16. He was entitled to pro-rata annual leave at the rate of 1.75 of his daily rate, on monthly basis. His pay slip for December 2014 which was availed to the Court shows this clause was satisfied. He did not provide the Court with other pay slips showing non-compliance. Instead, he claims annual leave pay for the entire years worked, without at the very least, explaining the inclusion of leave pay in the available pay slip. There is persuasion in the Witness Statement filed by the Respondent, to the effect that the Claimant was paid annual leave pro-rata. The prayer for annual leave pay is declined.

17. The pay slip indicates the Claimant was actively subscribed to the National Social Security Fund. He is not eligible for service pay under Section 35 [5] of the Employment Act 2007. The prayer for service pay is rejected.

18. Clause 6 of the Claimant's contract provided that he would be granted full off-duty with pay on public holidays should he be required to work. If he failed to work he would be subject to disciplinary action. He specifically claims under paragraph 12 [d] to have worked over public holidays and was not compensated. The Respondent offered nothing concrete showing the Claimant did not work on public holidays. While the Court rejects the generalized claim for '*all overtime, all weekends, and public holidays worked*'

under paragraph [g] in the prayers, paragraph 12 [d] is specific enough. ***The Respondent shall pay to the Claimant for work done during holidays at Kshs. 11,664.***

19. There shall be no order on the costs.

20. ***Interest granted at 14% per annum from the date of Judgment till payment is made in full.***

IN SUM, IT IS ORDERED:-

***a) It is declared termination was unfair.***

***b) The Respondent shall pay to the Claimant: the equivalent of 6 months' salary in compensation for unfair termination at Kshs. 83,088; 1 month salary in lieu of notice at Kshs. 13,848; and public holidays pay at Kshs. 11,664- total Kshs. 108,600.***

***c) No order on the costs.***

***d) Interest granted at 14% per annum from the date Judgment till payment in full.***

Dated and delivered at Mombasa this 19<sup>th</sup> day of June 2017

James Rika

Judge