



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

**CAUSE NO. 1043 OF 2014**

**RUKIA DIBA BORU.....1<sup>ST</sup>**  
**.....CLAIMANT**

**VERSUS**

**SECRETARY,**  
**THE PRINCIPAL**

**MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT.....1<sup>ST</sup>**  
**RESPONDENT**

**MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT.....2<sup>ND</sup>**  
**RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup>**  
**RESPONDENT**

**THE COMMISSIONER FOR REFUGEE AFFAIR.....4<sup>TH</sup>**  
**RESPONDENT**

**JUDGMENT**

1. The claimant in this suit pleads that at all times relevant to the claim, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents either jointly or individually employed the claimant through a letter dated 14<sup>th</sup> January, 2014 at a consolidated salary of Kshs.85,000/= for a period of 12 months ending on 31<sup>st</sup> December, 2014. The respondents however reduced or terminated the claimant's contract to three months without any proper reason.
2. The claimant complained the action by the respondents was in disregard to natural justice, employment laws and regulations and in breach of the said contract.
3. The claimant therefore seeks an order of this Court directed to the respondents to pay him one month's salary in lieu of notice and the remainder of the employment contract which he quantified at Kshs.850,000/=.
4. The 4<sup>th</sup> respondent by a replying affidavit sworn on 9<sup>th</sup> July, 2014 denied the claimant's claim and averred that the 4<sup>th</sup> respondent offered the claimant the position vide a letter dated 10<sup>th</sup> February, 2014

but no duly executed contract was annexed to the prior appointment letter dated 14<sup>th</sup> January, 2014. For this reason the 4<sup>th</sup> respondent contended that in the absence of a duly executed contract the parties renewed their terms through the letter dated 10<sup>th</sup> February, 2014. As such the 4<sup>th</sup> respondent was only liable to give one month's notice of termination of employment which was given by a letter dated 18<sup>th</sup> February, 2014.

5. On 10<sup>th</sup> February, 2015, I directed that the matter be disposed of by way of written submission as I became of the view that the nature of the matter and the documents filed did not make it necessary to call oral evidence.

6. Mr. Jaoko for the claimant submitted that the termination of his client's services prematurely was contrary to rules of natural justice, employment laws or regulations and in breach of the claimant's contract. Regarding the preparation of the contracts, counsel submitted that this was not the duty of his client but that of the respondent and could not be used to justify the cancellation of her contract at will.

7. The respondent on the other hand submitted that section 13(1) of the Employment Act permits change of particulars of terms of employment at the earliest opportunity, in any event not later than one month after such change. According to Ms. Kasim therefore, the claimant received a letter dated 10<sup>th</sup> February, 2014 informing her of change of employment period to three months from 1<sup>st</sup> January, 2014 to 31<sup>st</sup> March, 2014. This according to counsel was a proper notice of the change. Counsel further submitted that the claimant proceeded to serve for three months and received her salary in time.

8. At the expiry of her contract a vacancy was declared and advertised. The claimant applied, was interviewed alongside others, but was unsuccessful. Counsel therefore submitted that by making the application and attending the interview for the position, the claimant accepted the terms of the letter dated 10<sup>th</sup> February, 2014 informing her of the change of her employment terms since it beat logic for the claimant to attend an interview for a post she already had.

9. Counsel therefore invoked the doctrine of estoppel to preclude the claimant from asserting the revised contract as it was contrary to her previous action.

10. Section 13(1) of the Employment Act permits an employer to make changes in particulars of employment which are detailed in section 10 and 12 of the Act. These changes should be notified to the employee at the earliest opportunity in any event not more than one month from the date of change.

11. By a letter dated 14<sup>th</sup> January, 2014 the claimant was appointed to the position of human resource officer for a period of twelve months. By another letter dated 10<sup>th</sup> February, 2014 the claimant was informed of the same appointment but for three months with effect from 1<sup>st</sup> January, 2014. This 2<sup>nd</sup> letter was written less than one month after the first one and further informed the claimant that it cancelled any other communication that may have been previously issued to the claimant regarding the appointment for the 2014.

12. The second letter clearly and fundamentally revised the claimant's earlier appointment which was to last for twelve months to three months.

13. In as much as the law permitted it, the claimant ought to have regarded this as a fundamental breach, repudiated the contract and sued for damages on account of constructive dismissal. It was however deponed by the 4<sup>th</sup> respondent's witness that the claimant continued to work until the expiry of the revised three months and further that the claimant applied for the post when it was advertised, was shortlisted, interviewed but was not appointed. The claimant has not denied those facts. It was her position that the advertisement of the posts which according to her she still held and being asked to apply to be interviewed was a design to remove her from her appointment.

14. From the record, it would appear that the first time the claimant disputed or contested the revision of

the duration period for his contract was on 17<sup>th</sup> April, 2014 when his counsel on record issued the demand letter exhibited as exhibit 2. This was well over a month after the fundamental revision and after participating unsuccessfully in the interviews for the same post.

15. The conduct of the claimant therefore became inconsistent with his claim that he knew he had a twelve months and not a three month's contract.

16. The Court therefore finds and holds that the revision of the claimant's contract was permissible by law and if he felt it was a fundamental breach of his contract with the respondent he should have immediately dropped the contract and sued for wrongful and unfair termination of services.

17. His condonation of the variation and participation in the interview for the same post deprives him of the right to claim his services were wrongfully and unfairly terminated.

18. The claim is therefore unsuccessful and is hereby dismissed with costs.

19. It is so ordered.

Dated at Nairobi this 31<sup>st</sup> day of July 2015

Abuodha J. N.

Judge

Delivered this 31<sup>st</sup> day of July 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge