



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 290 OF 2012**

**(Before Hon. Justice Hellen S. Wasilwa on 20<sup>th</sup> August, 2015)**

**BANKING INSURANCE & FINANCE UNION (KENYA) .....CLAIMANT**

**VERSUS**

**PRIME BANK LIMITED .....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Grievant herein John Thagichu Kamau filed his Memorandum of Claim on 7/12/2012 through his Union Banking, Insurance & Finance Union (Kenya), BIFU. He claimed unfair and unlawful termination of employment by his employer Prime Bank Limited, the Respondent herein.
2. The Grievant in his evidence in court stated that he was employed by the Respondent in February, 2000 but was given his 1<sup>st</sup> appointment letter on 1/10/2002. Then, he was employed as a driver. Initially, he was to be on probation for 6 months. He served the 6 months probation and was now given a contract of employment which is Appendix 2 in Respondents documents filed on 1/3/2013. The contract was for a period of 2 years with effect from 1/4/2003 and expiring on 31/3/2005.

Upon expiry of this contract, it was not renewed. However on 12/5/2005 he was given another 2 years contract to expire on 31/3/2007. In July 2007, he was given another 2 year contract ending on 30/6/2007 this contract was renewed over time.

3. The Grievant avers that in the bank, unionisable members were permanently employed but non-union members were on temporary contracts. Permanent employees were also entitled to other benefits from the bank e.g. pension, loans and had higher salaries.
4. The Grievant avers that he worked for the bank for 10 years until he was terminated. On 30/6/2011 he was given a letter informing him that his contract had expired as per clause 16 (a) of the contract. No reason was given for terminating the contract. He was paid Kshs.253,958/= at the end which was his provident fund contribution. He wants the Court to direct the Respondents to pay his benefits as per the Memorandum of Claim.
5. In cross examination the Claimant told court that his contracts were renewable and he signed them

and never raised any issues on them. He also admitted that he was paid 1 months' salary in lieu of notice. He also told the Court that his contract ended on 30/6/2011 and he was given a letter terminating the contract the same day.

6. The Respondents on their part filed their Memorandum of Response on 26/3/2012 through the firm of Messrs Kimani Kimondo & Company Advocates. The Respondents also called one witness. It is the Respondents case that the Grievant was employed on periodic contracts by the Respondents which he served successfully.
7. The Respondents also avers that the Grievant was never discriminated against as all employees of the bank serve on fixed term contract. The Respondents have also averred that the Grievant was a member of the Provident Scheme the bank had with Kenindia and all staff joined it and also enjoyed other benefits. They aver that the Grievant was never terminated but that his contract expired and he was paid as per the Provident Scheme.
8. In cross examination, the Respondent admitted that clause 20 of the Appendix PBL 2 states that 3 months to the expiry of the contract, the employer was to inform the employee. That in case of the Grievant, he was not informed.
9. I have considered the evidence the evidence and submissions of both parties. Issues for determination are whether:
  1. ***The Grievant was dismissed or his contract lapsed by effluxion of time.***
  2. ***The Grievant is entitled to any benefits as per his claim.***
10. A look at the Grievants last contract after serving on several renewable contracts shows that the contract was for 3 years with effect from 1/7/2008 though dated 14/3/2009. The contract was therefore to lapse on 30/6/2011. Periodically however before this contract lapsed the Grievant's contracts had been renewed over time and on occasion when the contract lapsed and there was a lapse in administration action not renewing it in time, the Grievants continued to serve as if the contract had actually been renewed. This is what happened in this last case where the contract letter is dated 14/3/2009 yet the Grievant had been serving from 1<sup>st</sup> July, 2008.
11. In this Court's view this shows that when this occurred over time there was a reasonable expectation that the contract would be renewed automatically unless notice had been given prior to this.
12. In the case of the Grievant, no notice was given to him that the contract won't be reviewed until the date of its expiration on 30/6/2011. It is therefore this Court's finding that a notice given on 30/6/2011 was in breach of the contract terms between the Grievant and Respondent and also in breach of Grievant's reasonable expectation that the contract was going to be renewed. This therefore means that the Grievant was unfairly terminated by the Respondents.
13. It is therefore this Court's finding that the Grievant is entitled to 12 months salary compensation for unfair termination being =  $12 \times 38600 = 463,200/=$ .

The Grievant is also entitled to a Certificate of Service.

Respondents to pay costs of this suit.

**Read in open Court this 20<sup>th</sup> day of August, 2015.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kimondo for Respondent

Mildred Anguka holding brief for Tom Odero for Claimant