



**REPUBLIC OF KENYA**  
**INDUSTRIAL COURT OF KENYA**

**AT NAIROBI?**

**CAUSE NO 25 OF 2012**

**JAYNE KANINI MWANZA.....CLAIMANT**

**VERSUS**

**NATIONAL WATER CONSERVATION AND**

**PIPELINE CORPORATION.....RESPONDENT**

**JUDGMENT**

1. The Claimant herein Jayne Kanini Mwanza was employed by the Respondent in the position of General Manager Human Resource and Administration for 3 years on 17<sup>th</sup> December 2008. Her Contract was to run until December 2011 and was open for renewal. She was required to make an application for renewal 6 months before the expiry. She dutifully made an application for renewal on 7<sup>th</sup> June 2011. He letter seeking a renewal of the fixed term contract was in the following terms:-

PO Box 13690-00100

NAIROBI

7th June 2011

The Managing Director

National Water Conservation &

Pipeline Corporation

PO Box 30173-00100

**NAIROBI**

Dear Madam,

**RENEWAL OF APPOINTMENT – GENERAL MANAGER, HUMAN RESOURCES &**

## **ADMINISTRATION**

I wish to request for renewal of appointment into my current position of General Manager – Human Resources & Administration. This is in accordance with clause 7 of my Contract which requires that I give 6 months notice before the expiry of my Contract. My current 3 years contract was with effect 17<sup>th</sup> December, 2008 and expires on 16<sup>th</sup> December, 2011.

Yours faithfully,

(Signed)

**Jayne K. Mwanza**

P/No. 2955

2. It was received on 9<sup>th</sup> June 2011 by the Managing Director of the Respondent and there was no reply until 19<sup>th</sup> December 2011. The letter addressed to the Claimant was **Ref No. NWC/HRA/FIL/2955/(18)** was signed by Eng. P. A. Ogut OGW (Ms) the Managing Director of the Respondent. In it, the Respondent in *parrri materia* expressed the following to the Claimant:-

The Board of Directors (National Water Conservation & Pipeline Corporation) during its meeting held on 16<sup>th</sup> December, 2011 resolved that the Contract will not be renewed and that the position be advertised. In this regard you are encouraged to apply.

Consequently you will be paid your gratuity in line with Service Regulations and any other dues (if any), up to the above date.

You will be required to prepare Handing Over report and submit to the Managing Director. You are also required to fill and return the attached Official Secrets Act form on Leaving Service, Final Submission of Wealth Declaration form, Clearance form and surrender any Corporation property which may be in your possession.

Finally, on behalf of the Board and Management, I wish to thank you most sincerely for your past services and wish you well in your future endeavours.

Yours faithfully,

(signed)

**Eng. P. A. Ogut, OGW, (Ms)**

**MANAGING DIRECTOR**

Encls.

3. The Claimant had on 16<sup>th</sup> December 2011 written a letter whose contents were thus:

PO Box 13690-00100

NAIROBI

16<sup>th</sup> December 2011

The Managing Director

NWCPC

PO Box 30173

Nairobi

Dear Madam,

**RE: Renewal of contract**

I wrote to you in June 2011 requesting for renewal of my contract that was to expire on 17<sup>th</sup> December 2011. I wrote 6 months in advance as required expecting that the renewal request will be processed in good time and informed of the outcome before the contract expired. However, as of today I have not received any formal communication concerning the same. Since the contract expired on 17<sup>th</sup> December 2011, I have found it necessary in line with good governance not to report on duty awaiting a decision over the contract renewal. Meanwhile I have submitted to your office a leave application form requesting to take my pending leave days as I await for your response concerning the contract renewal.

(Signed)

**Jayne K. Mwanza**

P/N 2955

C.c. Chairman, HR & GP Committee

4. It is not indicated when this letter was received by the Respondent. As at the time of the letter of 19<sup>th</sup> December 2011 informing the Claimant that the contract would not be renewed, a total of 113 leave days remained unutilised. Immediately the new year was ushered in, the Minister for Water and Irrigation at the time Charity Ngilu revoked the appointment of 6 members of the Board of Directors of the National Water Conservation and Pipeline Corporation vide Gazette Notice No. 2/2012. The revocation was with effect from 3<sup>rd</sup> January 2012.
5. The Respondent had also just prior to the Minister's action advertised the position of the Claimant in some local dailies on Thursday December 22<sup>nd</sup> 2011. The facts of the case are undisputed. The Claimant was employed in 2008 on a fixed 3 year contract which was to expire on 17<sup>th</sup> December 2011. The contract provided that if the Claimant was desirous of renewing her contract with the Respondent she was to give the Respondent a written 6 month notice of that intention. In the case before me, the Claimant dutifully did that as per the letter of 7<sup>th</sup> June 2011 which is reproduced verbatim above. The Respondent did not renew the contract and communicated this decision on 19<sup>th</sup> December 2011 two days after the contract expired.
6. The law is clear. In the case of a fixed term employee If an employee continues working past the end of a contract without it being formally renewed, there's an implied agreement by the employer that the end date of the contract has changed. The employee requires to be given proper notice if the employer wants to dismiss the employee. The Claimant was therefore entitled to a notice of the intention to terminate. Simply put, the Respondent was under an obligation to communicate refusal to renew the contract the Claimant had with the Respondent **before** the expiry date. There is a plethora of case law that where there is legitimate expectation of renewal and there is no renewal such as in this case, the non-renewal of the contract amounts to a dismissal. See **South African Clothing & Textile Workers Union and Another v. CEDEMA Industries (Pty) Ltd [2008] ZALC** and **Mediterranean Woollen Mills (Pty) Ltd v SA Clothing & Textile Workers Union [1988] 2 SA 11** and **Banking Insurance & Finance Union (Kenya) V Kipsigis Teachers Sacco Society Limited [2013] eKLR** for the restatement of the principle. The case of **Spellman**

**& Walker Co. Ltd v. University of Nairobi [2005] eKLR** is not relevant as it relates to a conditional acceptance of an offer. The case of **Ruth Gathoni Ngotho-Kariuki v. Presbyterian Church of East Africa and Presbyterian Foundation [2012] eKLR** supports the Claimant's position.

7. In the case before me, the renewal was not automatic but had to be communicated to the Claimant. Failure to communicate the renewal was tantamount to a constructive renewal.

8. The Claimant's contract with the Respondent under Clause 25 provided as follows:-

Your services may be terminated by either party giving a three month's prior notice, or on payment of an equivalent of three (3) months basic salary and house allowance only in lieu of such notice.

9. The Claimant earned a basic pay of Kshs. 190,000 plus a house allowance of Kshs. 60,000/- making a total of Kshs. 250,000/-. In the case, the Claimant was on tenterhooks awaiting the communication from the Respondent which was woefully not forthcoming until well past the expiry date of the contract. The Court is inclined to grant the Claimant compensation for the manner of termination. The Court notes the Claimant submitted she would be entitled to 12 months compensation but the Court is persuaded to grant her only 3 months compensation.

10. The final result is that the Claimant succeeds to the extent given above. I enter judgment for the Claimant against the Respondent for:-

- a. Kshs. 750,000/- being 3 months notice per the contract
- b. Kshs. 918,000/- being 3 months salary as compensation
- c. Pay for 113 leave days
- d. Costs of the suit

Orders accordingly.

**Dated and delivered at Nairobi this 23<sup>rd</sup> day of January 2014**

**Nzioki wa Makau**

**JUDGE**