



**KENYA**

**REPUBLIC OF**

**IN THE INDUSTRIAL COURT AT NAIROBI**

**CAUSE NUMBER 368 [N] OF 2009**

**BETWEEN**

**ANNE THEURI ..... CLAIMANT**

**VERSUS**

**KADET LIMITED .....RESPONDENT**

*Rika J*

*CC. David Kipsang'*

*Ms. Nyobendo and Mr. Bosire instructed by Mang'erere J & Company Advocates for the Claimant*

*Mr. Itonga instructed by Itonga & Company Advocates for the Respondent*

**ISSUE IN DISPUTE: TERMINAL BENEFITS**

**AWARD**

1. The Claimant filed her Statement of Claim on 15<sup>th</sup> July 2009. The Respondent filed its Statement of Reply on 7<sup>th</sup> August 2009. The Claimant testified and closed her case on 30<sup>th</sup> October 2012. The Respondent testified through its Human Relations Manager Mtini Gichamba on 22<sup>nd</sup> February 2013, when the Respondent's case closed. The matter was last mentioned in Court on 18<sup>th</sup> March 2013 when the Parties confirmed the filing of their Final Arguments, and the Court advised Award would be delivered on Notice.

2. Anne testified she was employed by the Respondent on 17<sup>th</sup> November 2003 as an Accountant, initially for 1 year. The Respondent, full name Kenya Agency for the Development Enterprise and Technology Limited [KADET], is a Christian based Microfinance Organization owned by International NGO World Vision. It renewed the Claimant's contract periodically, and over the years she enjoyed added responsibilities and improved salaries. On 27<sup>th</sup> November 2008, her contract of employment was terminated. She at the time was in the position of the Acting Finance Director, with a gross monthly salary of Kshs. 164,003.

3. She was on maternity leave on 27<sup>th</sup> November 2008. She was called to the Office and given the letter of termination dated 27<sup>th</sup> November 2008. The Respondent stated that her contract would not be renewed, because she had displayed a non-committal attitude to work, which led to delay in the standardization

process. She was not required to express her wish on renewal. There was no warning letter or notice. She was on maternity leave and assumed the contract had already been renewed. She seeks the Court to grant to her:-

- a. 1 month salary [November 2008] at Kshs. 164,003;
- b. Leave allowance at 60% of her salary, as per employment contract at Kshs. 98,401.80;
- c. 3 months' salary in lieu of notice at Kshs. 492,009;
- d. Costs; and interest.

In total she prays for Kshs. 754,413, costs and interest.

4. She conceded on cross-examination that she was on contract. The last contract expired on 16<sup>th</sup> November 2008. There was no letter of renewal. She was conversant with the Human Resources Manual. Clause 3.10.6 [b] required the employee to give notice of her intention to renew her contract of employment, in writing, 2 months before the expiry of such notice. If the Respondent did not receive such notice, the assumption would be that the employee had no intention to renew. Anne stated she was not aware of this clause. It was not the practice. Her maternity leave started on 26<sup>th</sup> October 2008. She received termination letter on 27<sup>th</sup> November 2008, and was entitled to November salary. She seeks leave allowance for the period 17<sup>th</sup> November 2008 to 16<sup>th</sup> November 2008. She agreed her pay slip for January 2008 had leave allowance of Kshs. 58,924.80. She did not clear with the Respondent as she was on maternity leave. She was not called by her former employer for settlement, before she filed the Claim. Anne testified that she seeks damages for unfair termination, although this is not pleaded. The letter given to her on 27<sup>th</sup> November 2008 was indicated to be, 'end of contract.' On redirection she stated that the Respondent did not communicate non-renewal 1 month before expiry of the existing contract. She was not told about the standardization process. She prays that the Claim be allowed.

5. The Respondent stated it employed the Claimant from 2003 under various periodic contracts, in accordance with its Human Resource Policy. Any employee desiring to renew contract, would issue the Respondent 2 months notice expressing such intention, before the expiry of the contract. It was after the expiry of her last contract that the Respondent informed her there would be no renewal. She is not entitled to 3 months' salary in lieu of notice. She was asked to clear with the Respondent so as to receive her final dues. She has not done so to-date. Her dues are capable of being computed in accordance with the expired last contract of employment.

6. Gichamba explained that the Claimant last worked on a 3 year contract, which expired in 2008. The Human Resource Manual stipulated that employees wishing to renew their contracts express such interest, 2 months before expiry; Anne did not. The Respondent advised her it would not renew the contract. Her contract was not terminated by the Respondent; it lapsed at the end of the contractual period of 3 years. She was only entitled to days worked, and any pending leave days. The Human Resource Manual was availed to every employee.

7. The witness stated on cross-examination that he joined the Respondent in 2007. The Claimant had been working from 2003. The Claimant's contract lapsed on 16<sup>th</sup> November 2008. The letter advising there would be no renewal is dated 27<sup>th</sup> November 2008. She had not indicated she wished to renew the contract. She was on maternity leave at the time the contract expired. The failure to express her intention was one of the reasons for non-renewal. There was an adverse audit of the Respondent, caused by lack of information from the Claimant's Finance docket. Audit was carried out by World Vision. She was asked to respond to the issues. She was present when audit was carried out. The Respondent asks the Court to dismiss the Claim.

*The Court Finds and Awards:-*

8. It is not clear from the evidence and pleadings of AnneTheuri, in what way she seeks the assistance of the Court. In paragraph 8 of her Statement of Claim, she says, "*The Claimant's Claim is for Kshs. 754,413.80 being service pay due and owing to the Claimant.*" In the preceding paragraph, she mentions

the same amount as comprising notice, leave allowance and salary for November 2008. She testified that she seeks damages for unfair termination. This was on cross-examination. She did not plead this, and said nothing of damages in her evidence in chief. In her closing submissions, she states that she ought to be paid salary for the unexpired period of her subsequent contract. What period would this contract be, and what salary would it attract? How would the Court know what the terms of a subsequent contract would be? There was nothing on this submission in her evidence or pleadings. She seeks leave allowance for 2007-2008. Her pay slip for January 2008 has an amount of Kshs. 58,924, stated to be leave allowance, and which Anne did not explain or otherwise challenge, in her evidence.

9. There was nothing in the evidence of the Claimant that required the Respondent to renew her contract, after it had expired in November 2008. There would be no justification in seeking notice pay, while the Claimant was all the time aware that she was on a 3 year contract, with specific starting and ending dates. There was nothing to show that the Respondent had either expressly or implicitly, given the Claimant any basis for her to legitimately expect renewal. She was expected to write to the Respondent, and express her desire to renew contract, 2 months before the expiry of the last contract; she did not do so. She was a top management employee, and cannot feign ignorance of the Respondent's Human Resource Manual.

10. The reasons given by the Respondent for its decision not to renew the claimant's contract, have no relevance to this dispute. Once a fixed term contract is at an end, the employer has no obligation to justify termination on other grounds beyond the lapse of the fixed period. There were no additional reasons required under the outgoing contract; the Human Resource Manual; and the Employment Act 2007. It was the prudent thing for the Claimant not to plead damages for unfair termination, because in the circumstances of this case, termination was mutual and in conformity to the terms of the expiring contract. The only item that this Court finds awardable is the November 2008 salary at Kshs. 164,003. The court does not have any material to award the other prayers sought by the Claimant in her Statement of Claim, or even to grant the un-pleaded compensatory damages for unfair termination. It would be advisable for the Claimant to contact the Respondent, clear out, discuss and agree on any other dues that may be payable under the expired contract. She was invited to do this before coming to Court, but did not avail herself, opting instead to pursue her Claim without sufficient legal or factual grounds. IT IS HEREBY ORDERED-:

***[a] The Claim for November 2008 salary at Kshs. 164,003 is allowed;***

***[b] Other Claims are rejected;***

***[c] The Claimant shall clear with the Respondent, and if she is so minded, discuss and agree on any other outstanding dues under her last contract of employment; and***

***[d] No order on the costs and interest.***

Dated and delivered at Nairobi this 17<sup>th</sup> day of **September, 2013**

James Rika

Judge