



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. 70 OF 2018

IN THE MATTER OF ARTICLES 3, 10, 19, 20, 21, 22, 23, 41, 47, 50, 159, 162(2),

165(5)(b), 232, 236, 258 AND 260 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL

FREEDOMS UNDER ARTICLES 10, 20, 28, 41, 47, 48, 50, 73, 232 AND 236 OF

THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF

THE ENFORCEMENT OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTIONS 41, 45 AND 46(h) OF THE EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF

SECTIONS 5, 6, 7, 8 AND 10 OF THE PUBLIC SERVICE

(VALUES AND PRINCIPLES) ACT NO. 1A OF 2015

AND

IN THE MATTER OF SECTIONS 8, 9, 10 AND 15 OF THE

LEADERSHIP AND INTEGRITY ACT, CAP 182 OF 2012

AND

IN THE MATTER OF SECTIONS 4, 6, 7, 8, 9 AND 11 OF THE FAIR

ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015

AND

IN THE MATTER OF SECTIONS 7, 8, 9 AND 14 OF THE FOREST CONSERVATION

AND MANAGEMENT ACT, NO. 34 OF 2016

AND

IN THE MATTER OF RULES 4, 10, 11, 22, 23 AND 24 OF THE

CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND

FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

EMILIO NDWIGA MUGO.....PETITIONER

v

KENYA FOREST SERVICE.....1st RESPONDENT

PETER KIMATHI KINYUA.....2nd RESPONDENT

JUDGMENT

1. Emilio Ndwiga Mugo (the Petitioner) was appointed the Director of the Kenya Forest Service for a renewable 3-year term effective 30 July 2015.
2. 6-months to the expiry of the contract, around 1 December 2017, the Board of the Kenya Forest Service (the Board) evaluated the Petitioner's performance and scored him at 97%.
3. The Board recommended that the Petitioner's contract be renewed.
4. On or around 18 January 2018, the Petitioner formally applied for the renewal of his contract.
5. In early 2018, concerns emerged about the management of forests. On 26 February 2018, the Cabinet Secretary, Environment appointed a Task Force to inquire into forest resources management and logging activities in Kenya (the Task Force sent a report to the Cabinet Secretary on 30 April 2018).

6. The Board, apparently aware of the concerns on management of forest resources, decided to make changes in the management of the Kenya Forest Service (the Service).
7. On or around 12 March 2018, the Board released a Media statement wherein it was indicated that staff changes had been made. These included the replacement of the Petitioner.
8. On 13 March 2018, the Board met and resolved to have the Petitioner step aside as the Chief Conservator of Forests.
9. Consequently, the Board sent the Petitioner on a 3-months compulsory leave on 14 March 2018 (the compulsory leave was to lapse around 13 June 2018). The reason given was to facilitate investigations into complaints of management of the *Plantation Establishment and Livelihood Improvement Scheme* and harvesting of forests.
10. In the meantime, the term of the Board had come to an end on 31 March 2018.
11. With the Board not in place, the acting Chief Conservator of Forests consulted with the Principal Secretary, Ministry of Environment on the status of the Petitioner's compulsory leave.
12. The acting Chief Conservator of Forests then wrote to the Petitioner on 28 May 2018, to inform him that after consultations with the Principal Secretary it had been decided that the compulsory leave be extended until the coming into office of a new Board.
13. The Cabinet Secretary, Ministry of Environment and the President appointed new Board members and Chairperson on 30 May 2018 and 4 June 2018 respectively.
14. Upon receipt of the letter from the acting Chief Conservator of Forests, the Petitioner wrote to the Principal Secretary, Environment and Forestry on 4 June 2018, seeking further clarification on the extension of the compulsory leave, and the status of his position considering that his contract was coming to an end in July 2018.
15. On 18 July 2018, the *new* Board formed an Ad Hoc Investigation Committee to look into the report of the Task Force and carry out a detailed audit on the disposal of public plantation forests materials from 2015 to 2018. The Committee issued a preliminary report to the Board on 24 July 2018.
16. The Board considered the Report and on the same day, it issued a show-cause notice to the Petitioner asking him to respond to 7 allegations by 30 July 2018 ahead of an oral hearing later the same day.
17. The Petitioner responded to the show cause but did not attend the meeting on 30 July 2018 since he had moved to Court on 20 July 2020 and secured *ex-parte status quo* orders.
18. In the Petition, the Petitioner contended that the extension of the compulsory leave was unlawful and that the Respondents had subjected him to unfair labour practices.
19. When the Motion came up for *inter-partes* hearing on 30 July 2018, the Petitioner indicated that he had looked at the replying affidavit and sought to have the Motion abandoned and further to have the Petition amended.
20. The Court marked the Motion as withdrawn and further directed the Petitioner to file and serve an Amended Petition on or before 6 August 2018.
21. The Court also directed the Respondents to file and serve responses and the filing and exchange of submissions ahead of highlighting on 6 November 2018.
22. On 31 July 2018, the Board issued a letter to the Petitioner informing him that his contract would not be renewed.

23. The Petitioner did not comply with the order for the filing of an Amended Petition until 26 September 2018 (the Petitioner introduced heads of claim for breach of contract, violation of legitimate expectation and unfair termination of employment). The Respondents had also filed a Notice of Preliminary Objection.

24. When the Petition was called for the highlighting of submissions on 26 September 2018, the Petitioner applied to have the Amended Petition admitted out of time.

25. The Court admitted the Amended Petition and gave fresh directions on the filing of further affidavits and submissions ahead of highlighting on 5 February 2019.

26. On 5 February 2019, the parties informed the Court that they had consulted over an application by the Respondents to have the Petition proceed by way of *viva voce* evidence and consented to the calling of witnesses.

27. The Court directed the parties to file and exchange witness statements and Agreed Issues.

28. The Petition was heard on 25 November 2019, 5 February 2020, and 18 November 2021.

29. The Petitioner and Peter Kimathi Kinyua (Chair of the Board) testified.

30. The Petitioner filed his submissions on 19 January 2022, (should have been filed/served before 18 December 2021) and he identified the Issues in Dispute as:

- (a) Whether the Petitioner complied with the requirements for renewal of contract"
- (b) Whether the conduct of the Respondent amounted to unfair labour practice"
- (c) Whether the Petitioner's fundamental rights and freedoms and other constitutional protections were violated by the Respondents"
- (d) Whether the Petitioner is entitled to the remedies"
- (e) Whether the Petitioner is entitled to costs.

31. The Respondents had filed their submissions on 21 December 2021, and they identified the Issues in dispute as:

- (a) Whether the Petitioner's compulsory leave was lawful and justifiable"
- (b) Whether the Board was bound to consider the adversarial and Ad Hoc Investigation Committee report"
- (c) Whether any of the Petitioner's rights were violated"
- (d) Whether the Petitioner is entitled to the reliefs sought"

32. The Court has considered the pleadings, evidence, and submissions and identified the real issues in dispute as examined hereunder.

Term of the Petitioner's contract

33. The Petitioner was appointed as Director (Chief Conservator of Forests) through a letter dated 30 July 2015 for a period of

3-years.

34. In terms of the contract, the Petitioner's contract should have expired on or around 30 July 2018.

35. The appointment was made during the currency of the Forest Management Act, 2005.

36. However, the Act was repealed and replaced by the Forest Conservation Management Act, 2016.

37. Section 77(f) of the Act provided:

a person who immediately before the commencement of this Act was an employee of the Service under the repealed Act shall continue to hold or act in that office as if appointed to that position under this Act, and all benefits accruing to employees under the repealed Act shall continue accruing to them under this Act.

38. However, the Respondents took the view that the sections could not apply retrospectively.

39. The position taken by the Respondents cannot be correct because, under section 77(f) of the Act, the Petitioner was assured continuity of, and benefits accrued to employees under the new Act. It was not only continuity in the office that accrued to the Petitioner.

40. In the view of the Court and the Court finds that by virtue of the new Act and more so section 77(f), the Petitioner's contract/term was increased by operation of the law and should therefore have lapsed on or 30 July 2019.

41. By dint of the aforesaid proviso, the Petitioner was to continue in the office of Director, which had now been renamed, Chief Conservator of Forests.

42. The Petitioner and the Respondents were aware of the changed state of the law in 2018 and its effects on the Petitioner's contract. None of them disclosed why action was not taken to align the contract with the law.

43. Equally not disclosed by the Petitioner was why he opted to apply for the renewal of the contract and alignment of the term of the contract with the law.

44. For whatever, it is worth, it is the Court's view is that the request for renewal of the contract was legally/contractually superfluous.

Compulsory leave: unfair labour practices

45. The Petitioner contended that on the night of 12 March 2018, the Chair of the Board called him on phone and told him that he had decided that he be sent on compulsory leave and that he should not report to work the next day.

46. According to the Petitioner, the (verbal) decision of the Chair did not have the backing of the Board and was thus devoid of any legal anchor.

47. The Petitioner also took the view that the Board meeting of 13 March 2018 was intended to sanitise the decision to send him on compulsory leave and that the reasons given were vague and general.

48. The Petitioner further challenged the lawfulness of the decision on the ground that the person who called the Board meeting (acting Chief Conservator of Forests) had been appointed to act unlawfully (that the Board had not approved the appointment).

49. Still challenging the decision of the Respondents, the Petitioner asserted that the compulsory leave exceeded the 30-days

allowed under the Human Resources Policy and Procedures Manual, 2016.

50. The Respondents on the other hand justified the lawfulness of the compulsory leave on the ground that clause 6:12 of the Human Resource Policy and Procedure Manual, 2016 allowed the Board to send an employee on compulsory leave for a period not exceeding 3-months on full salary to facilitate investigations into allegations against an employee and that pursuant to the power, the Board met on 13 March 2018 and resolved to send the Petitioner on compulsory leave.

51. The resolution was followed with a communication to the Petitioner on 14 March 2018.

52. The Respondents also stated that the compulsory leave was necessary because it was preceded by the appointment of a Task Force for Forest Management and Logging Activities by the Cabinet Secretary, Environment.

53. And to justify why the compulsory leave was extended beyond the 3-months, it was asserted that the term of the Board came to an end on 31 March 2018, and therefore without a Board, the Principal Secretary, Environment was consulted, and an agreement was reached to extend the leave until a new Board was appointed. The members of the new Board were appointed on 30 May 2018 and 6 June 2018.

54. The Board meeting at which the resolution to send the Petitioner on compulsory leave was called by the acting Chief Conservator of Forests. The Petitioner contended that the Board had not appointed the acting Chief Conservator.

55. The Petitioner lamented that the meeting was therefore not valid one and any decisions made therein null and void.

56. The Petitioner referred to section 34 of the Public Service Commission Act and section 6(a) of the State Corporations Act.

57. The Kenya Forest Service has an establishing Act and in the view of the Court, the aid of other statutes such as the Public Service Commission Act should only be invoked if there is a lacuna in the parent Act.

58. Under section 14 of the Forrest Management and Conservation Act, the mandate to appoint the Chief Conservator of Forests is given to the Board, in consultation with the Cabinet Secretary, Environment.

59. Being clothed with the power to appoint a Chief Conservator of Forests in consultation with the Cabinet Secretary, the Court is of the view that the Board could lawfully appoint an officer of the Service to act in the absence of the substantive holder and that such appointment did not require consultations with the Cabinet Secretary.

60. The Court has looked at clause 6:12 of the Human Resource Policy and Procedures Manual. It bestows on the Board the power to send an employee on compulsory leave for a period not exceeding 3-months.

61. The Respondents did not deny that the Chair of the Board called the Petitioner on the night of 12 March 2018 and informed him of what to expect.

62. If the action of the Chair of the Board to call the Petitioner on the night of 12 March 2018 was a formal communication, the Court is of the view that it was irregular.

63. However, in the Court's view such irregularity, if at all, was of no legal significance since the Board met on 13 March 2018 and resolved to send the Petitioner on compulsory leave.

64. The resolution was communicated to the Petitioner on 14 February 2018.

65. In the compulsory leave letter, the Petitioner was informed that the decision was made after receipt of complaints from members of the public with respect to the *Plantation Establishment and Livelihood Improvement Scheme* (PELIS) and that the compulsory leave was to enable investigations.

66. Consequently, the Court is of the view that the Board could not have given specific allegations in the letter as the investigations were meant to establish the facts and veracity of the complaints.

67. It is also not disputed that the term of the Board expired just weeks after the Petitioner had been sent on compulsory leave.

68. With such a void, it was not reckless or unlawful of the acting Chief Conservator of Forests to consult the Principal Secretary to clarify the status of the Petitioner's compulsory leave.

69. The Court finds that sending the Petitioner on compulsory leave was not unlawful or a violation of any of his rights.

Whether the failure to renew the Petitioner's contract amount to constructive dismissal"

70. The Petitioner's contract was initially to lapse on or around 30 July 2018. It required the Petitioner to apply for renewal at least 6-months before expiry (prior to the request for renewal of contract, the Board had evaluated the performance of the Petitioner on 15 December 2017 and scored him at 97%).

71. The Petitioner made an application for renewal of contract on 18 January 2018.

72. On 13 March 2018, the Board met and resolved that the Petitioner should step aside for investigations to be carried into allegations concerning the management of forests in Kenya.

73. As a result, on 14 March 2018, the Chair of the Board wrote a letter to the Petitioner informing him that he was being sent on a 3-month compulsory leave to pave way for investigations into allegations of management of a scheme the Kenya Forest Service was running.

74. On 23 March 2018, the Human Resource and Administration Committee of the Board met and noted that the allegations which had led to the Petitioner being sent on compulsory leave were not specific and that there was need to get the requisite evidence to back the decision.

75. The Board also noted that there were no facts to find the Petitioner culpable.

76. In the meantime, the term of the Board expired and on 28 May 2018, the acting Chief Conservator of Forests notified the Petitioner that after consultations with the Principal Secretary, it had been decided that the compulsory leave which was to lapse on 14 June 2018 was being extended until a new Board was put in place.

77. Upon receipt of the notification, the Petitioner wrote to the Principal Secretary seeking clarification on his request for renewal of contract and his having been mentioned adversely in a Task Force report on the forest sector.

78. Two days later, on 6 June 2018, new Board members were gazetted.

79. On 24 July 2018, the Chair of the Board issued a show-cause notice to the Petitioner to respond to certain allegations which had emerged after a report by an Ad Hoc Committee of the Board. The response was required by close of 30 July 2018.

80. The notice further advised the Petitioner that because of the allegations, he would be evaluated afresh on 30 July 2018 before a decision is taken on the request for renewal of contract.

81. The Board furnished the Petitioner with copies of the reports by the Task Force on Forest Management and Logging Activities, Ad Hoc Committee, Adversarial Report from the Task Force and Evaluation Tool at the same time.

82. The Petitioner responded to the show-cause on 30 July 2018 but did not appear before the Board for an oral meeting.

83. On 31 July 2018, the Board notified the Petitioner that it had considered his response and further that he had been scored 50.4% and thus his contract would not be renewed.

84. The Petitioner contended that the non-renewal amounted to constructive dismissal, unfair termination of employment, was unlawful and not procedural and violated his legitimate expectation of renewal.

85. The Respondents countered that the contract being a fixed-term contract carried no expectation of renewal because the same was discretionary and the Court of Appeal decisions in *Trocaire v Catherine Wambuko Karuno* (2018) eKLR and *Registered Trustees of the Presbyterian Church of East Africa v Ruth Gathoni Ngotho-Kariuki* (2017) eKLR were cited.

86. According to the Respondents, the contract expired by effluxion of time and thus the claim of wrongful or unfair termination of employment could not arise.

87. Constructive dismissal is not provided for in a statute in Kenya, but it has been accepted by the Courts in the jurisdiction.

88. The Court of Appeal addressed the question of constructive dismissal in *Coca Cola East & Central Africa Limited v Maria Kagai Lugaga* (2015) eKLR wherein it stated:

The key element in the definition of constructive dismissal is that the employee must have been entitled to or have the right to leave without notice because of the employer's conduct. Entitled to leave has two interpretations which gives rise to the test to be applied. The first interpretation is that the employee could leave when the employer's behaviour towards him was so unreasonable that he could not be expected to stay- this is the unreasonable test. The second interpretation is that the employer's conduct is so grave that it constitutes a repudiatory breach of the contract of employment- this is the contractual test.....

.....

- a. What are the fundamental or essential terms of the contract of employment"
- b. Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer"
- c. The conduct of the employer must be a fundamental or significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.
- d. An objective test is to be applied in evaluating the employer's conduct.
- e. There must be a causal link between the employer's conduct and the reason for employee terminating the contract i.e causation must be proved.
- f. An employee may leave with or without notice so long as the employer's conduct is the effective reason for termination.
- g. The employee must not have accepted, waived, acquiesced or conduct himself to be estopped from asserting repudiatory breach; the employee must-within a reasonable time terminate the employment relationship pursuant to the breach.
- h. The burden to prove repudiatory breach or constructive dismissal is on the employee.
- i. Facts giving rise to repudiatory breach or constructive dismissal are varied.

89. The Petitioner was expected to bring himself within the ingredients outlined above.

90. In the scenario before the Court, the Respondents lawfully sent the Petitioner on compulsory leave to facilitate

investigations. When the investigations were completed, he was issued with a show-cause and requested to make written representations as well as appear for an oral hearing.

91. The Court is, therefore, unable to concede to the proposition by the Petitioner that his case was one of constructive dismissal since he did not prove the ingredients.

Unfair termination of the contract

Procedural fairness

92. Critical to the question of unfair termination of employment is the determination of when the Petitioner's contract was set to lapse.

93. The Court has already made a determination that the contract's term was extended to 4-years by operation of the law and consequently it should have ended on or around 29 July 2019 (both the parties conducted themselves under the impression that the contract was to lapse on or around 30 July 2018 or 31 July 2018).

94. Section 41 of the Employment Act, 2007 requires the employer to afford an employee an opportunity to make representations before terminating the employment contract.

95. In the case under consideration, the Board commenced disciplinary proceedings against the Petitioner. The proceedings reached its apogee just at the time the contract was apparently coming to an end in the view of the parties.

96. The Petitioner was informed of the allegations to confront, and he made a written response but did not appear for the oral hearing.

97. The Petitioner did not cooperate with the Board and failed to appear for the meeting on 30 July 2018 because of the *status quo* orders granted by the Court on 23 July 2018. He should have appeared before the Board to bring to its attention the *status quo* orders.

98. The Court finds that the Board was in substantial compliance with the requirements of procedural fairness.

Substantive fairness

99. In the letter of 31 July 2018, Board indicated that it had found the Petitioner culpable in respect of the 7 allegations he was facing and therefore it would not renew the contract.

100. The Court has concluded that the Board's belief on the expiry of the contract was based on a misapprehension of the law on its part and on the part of the Petitioner.

101. Nevertheless, the Court must examine whether the reasons for the *non-renewal* of the contract were valid and fair as contemplated by sections 43 and 45 of the Employment Act, 2007.

102. To discharge the burden expected of it, the Board produced the Task Force Report and reports of its Committee.

103. Before examining the merits or reasonableness of the reasons, the Court will look at the *status quo* as of 23 July 2018 when the Petitioner moved the Court to establish whether the decision was contrary to the court order.

104. When the Petitioner moved the Court on 20 July 2018, the Board had not issued the show-cause letter dated 24 July 2018 and the Petitioner was at that particular point in time in the main challenging the extension of compulsory leave and any contemplated disciplinary process.

105. There is no affidavit of service on record to show when the *status quo* order was served upon the Respondents.

106. The Court is therefore not able to determine whether the processes carried out by the Board from 24 July 2018 to 31 July 2018 were in violation of the *status quo* order or were legally anchored in the pleadings before the Court.

107. The Court has looked at the Task Force Report and the accompanying Confidential Report. It speaks of a forest sector where the law of the jungle reigned supreme under the Petitioner's stewardship. It recommended further investigations and administrative action on the Petitioner and other employees and members of the Board.

108. The Report established that the Petitioner had used his position in conjunction with a Board member to allocate an ecotourism site in Embu and a quarry site in Meru to a relative of the Board member.

109. The Report also established that the Petitioner allocated trees with Kshs 30,000,000/- to a saw miller without payment and that he authorised the re-allocation of an indigenous forest area for commercial farming purposes instead of replanting.

110. During cross-examination, the Petitioner conceded that allocation letters dated 14 July 2017 to a particular saw miller had discrepancies but maintained that the discrepancies were not unusual. He also admitted having renewed the allocation to a saw miller.

111. The Report reveals astonishing neglect by the management team in the management of the forest resources. The Petitioner was at the apex of that management team.

112. The Court finds that the Board proved valid and fair reasons to terminate the Petitioner's contract.

Constitutional violations

Equal protection of the law and discrimination

113. The Petitioner contended that the Respondents violated his right to equal protection of the law in that he was discriminated against because part of the allegations against him related to a period when he was not the Chief Conservator of Forests.

114. In this Courts view, the mere laying of charges against an employee does not amount to discrimination or violation of the right to equal protection of the law.

Right to dignity

115. The Petitioner asserted that his right to dignity was violated because the Respondents extended the compulsory leave beyond the 3-months prescribed.

116. The term of Board which sent the Petitioner on compulsory leave expired within 2 or so weeks after the decision. The compulsory leave was to run until 14 June 2018. The new Board was only fully constituted in June 2018.

117. Because of the lacuna, the acting Chief Conservator of Forests consulted with the Principal Secretary, Environment and they agreed to have the compulsory leave extended pending a decision of the new Board.

118. Without a Board in place, the Court does not find the decision to extend the leave to have been a violation of the Petitioner's right to dignity.

Right to fair administrative action

119. The Petitioner also challenged the lawfulness of the extension of the compulsory leave on the ground that the Board did not have the power to do so and that section 4 Part 1 of the Fair Administrative Action Act and Article 47 of the Constitution were violated.

120. The decision, the Petitioner asserted was in bad faith.

121. The Court has already reached a conclusion that the Board had the power to send the Petitioner on compulsory leave and that due to the absence of a Board, the extension of the leave was not unfair.

122. The Court will therefore not find a violation of the right to fair administrative action.

Right to fair hearing

123. The Petitioner urged that he was entitled to a fair hearing by virtue of Article 50(1) of the Constitution and that he was not accorded such an opportunity before a Disciplinary Committee.

124. When the Petitioner was sent on compulsory leave, it was to facilitate investigations. After the investigations, it was upon the Board to decide on the next steps.

125. The term of the Board expired before the lapse of 3-months. When a new Board was put in place, it sent a show-cause notice to the Petitioner and requested him to respond. He was also invited to attend a hearing on 30 July 2018. The Petitioner responded but failed to attend the hearing.

126. This took place at the tail end of the Petitioner's contract as understood by the parties.

127. The Board considered the response and resolved not to extend the Petitioner's contract.

128. The Board informed the Petitioner of the allegations to confront and requested him to respond and attend an oral hearing.

129. Despite making a written response, the Petitioner snubbed the opportunity to appear before the Board on 30 July 2018.

130. The Court finds that his right to a fair hearing was not violated.

Legitimate expectation

131. The Petitioner was on a fixed-term contract that could be renewed.

132. The Petitioner contended that because he had performed exemplarily well in the performance evaluations, he had a legitimate expectation that his contract would be renewed for a term of 4-years.

133. The Petitioner urged that the Respondents had breached his right to legitimate expectation by declining to renew the contract.

134. An employee contract denotes the provision of personal services. Its continuation would depend not only on performance but on conduct in the workplace.

135. The reasons given by the Board for not renewing the Petitioner's contract went beyond performance and bordered on misconduct.

136. The factual situation was unearthed after investigations by the Task Force and a Committee of the Board. These facts were

not in place when the Petitioner's performance was evaluated in December 2017.

137. Addressing the issue of legitimate expectation of renewal of fixed-term contracts, the Court of Appeal said in Registered Trustees of the *Presbyterian Church of East Africa & Ar v Ruth Gathoni Ngotho – Kariuki* (2017) eKLR:

fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.....This is in relation to the salary for the months of April up to 5th May, 2010. Similarly, since the respondent's contract came to an end by effluxion of time any claim for wrongful termination could not be maintained.

138. The Court will not disturb the decision on the grounds of legitimate expectation.

Appropriate remedies

Compensation/lost income

139. By the time the Board was deeming the contract as having lapsed, it had 1-more year to run, and the Court is of the view and finds that the premature termination of employment though clothed as non-renewal of the contract was fair.

Gratuity

140. The Petitioner's contract provided at clause 12 for the payment of gratuity upon the successful completion of the contract.

141. The Court has concluded that the termination of the contract was fair and therefore, the claim for gratuity has no contractual foundation.

Accrued leave

142. The Petitioner's contention that he had 45 accrued leave days was not contested by the Board, and the Court will allow this head of the claim.

Pension

143. The Petitioner's contract provided for gratuity and not pension. The Petitioner did not lead any evidence to show that apart from gratuity, he would be eligible for a pension, and this head of the claim is declined.

Conclusion and Orders

144. From the foregoing, the Court finds and declares:

- (i) The Petitioner's contract had been altered from 3-years to 4-years by operation of the law.
- (ii) The Respondents' decision to terminate the contract was fair.

145. The Court awards the Petitioner:

- (i) Accrued leave

146. The Respondents to compute and pay the accrued leave within 30-days failure to which the amount to attract interest at court rates from the date of judgment.

147. The parties needlessly filed documents that were not relevant, thus delaying the expeditious determination of the Petition. The Petition did not also raise any constitutional questions. Each party to bear its own costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 27TH DAY OF APRIL 2022.

RADIDO STEPHEN, MCIARB


JUDGE

Appearances

For Petitioner Okweh Achando & Co. Advocates

For Respondents Lutta & Co. Advocates

Court Assistant Chrispo Aura

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