

# LEGAL ALERT



**Continuous Fixed-Term Contracts vis-a-vis Permanent Employment: A Review of the Court of Appeal decision in the case of Kenya County Government Workers' Union v Embu County Government & Another**



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## Introduction

The Court of Appeal, in its recent decision in [Kenya County Government Workers' Union v Embu County Government & another \(Civil Appeal No. 178 of 2020\) \[2026\] KECA 1481 \(KLR\)](#) (24 July 2026), addressed the tension between the legitimate use of successive fixed-term contracts and the protection accorded to employees whose work is permanent, continuous and integral to an organisation's operations. The Court also examined the legal consequences that arise where the substance of an employment relationship departs from its contractual form.

## Background and Facts of the Appeal

The claimant Union instituted these proceedings before the Employment and Labour Relations Court alleging discrimination in employment contrary to Article 27 of the Constitution and violation of the right to fair labour practices guaranteed under Article 41 of the Constitution. The Union contended that the County Government of Embu had engaged employees on successive fixed-term contracts lasting between six months and one year while simultaneously characterising those engagements as casual employment, contrary to sections 10(3)(c) and 37 of the Employment Act.

The County Government denied the allegations of discrimination. It maintained that it had inherited employees serving under fixed-term contracts and that the Employment Act recognises the principle of freedom of contract. Consequently, it argued that it was entitled to engage employees through any lawful form of employment, including fixed term and casual contracts.

## The Court's Findings

The Court of Appeal allowed the appeal by the Union. In so doing it considered, among other issues, whether the use of successive fixed-term contracts amounted to discrimination and whether the employees engaged as casual workers, had by operation of section 37 of the Employment Act, transitioned into permanent employment.

The Court answered both questions in the affirmative.

In determining the true character of the employment relationship, the Court adopted a substance-over-form approach. It reiterated that the character of an employment relationship is not determined solely by the contractual label assigned by the employer, but by the practical realities of the relationship assessed on case-by-case basis.

Applying that principle, the Court's found that the employees had performed work of a permanent and continuous nature for prolonged periods, in some cases extending to twenty years. The Court held that the successive fixed-term contracts did not reflect genuine fixed-term engagements but constituted an elaborate device designed to deny employees the statutory and constitutional protections to which they were entitled. The contractual labels adopted by the employer were therefore not conclusive of the true nature of the employment relationship and could not defeat the employees' rights under Article 41 of the Constitution.

Similarly, in addressing the interpretation of section 37(1) of the Employment Act, the Court held that



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the employees designated as casual workers fell within the protection of section 37(1) of the Employment Act. The employees having worked continuously for an aggregate period of not less than a month and performed duties that were not reasonably to be concluded within a specific period, by operation of the law converted the casual employment contracts to term contracts, entitling them to the protections available to regular employees.

## Significance of the Judgment

The legal consequences of fixed-term contracts and their termination are well settled. However, his decision demonstrates that the application of fixed-term contracts is subject to the peculiar facts of each case.

The finding in *Kenya County Government Workers' Union* case reinforces that the mere existence of a fixed-term contract does not, by itself, immunise such contracts and their implementation from judicial scrutiny. The Court of Appeal while recognising the freedom to contract in fixed term contracts as enunciated in the well-known decision of *Transparency International-Kenya v Teresa Carlo Omondi* reemphasized the relevance of substance-over-form analysis of employment contracts.

The takeaway for employers is that the drafting and implementation of termination clauses in fixed contracts carry a menacing potential for legal liability. Ambiguous termination clauses are in general held against the maker, being the employer in this regard. As such, employers do not enjoy a carte blanche to structure and implementation of fixed term contracts in a manner that defeats statutory and constitutional

labour protections.

The practical implication for employers is that legal exposure increases with the number and duration of successive renewals, particularly where the employee continues to perform work of a permanent and continuous nature.

In determining whether work is permanent and continuous, relevant considerations are whether the functions are integral to, and continuously required by and/or, for the employer's operations. The centrality of the role played by the employee alone, however, is not determinative; courts will review the totality of the employment relationship. Consequently, employers should exercise due care in determining the duration and structure of fixed-term contracts, considering the nature of the work, the genuine operational justification for limiting the term, and the nexus between the engagement and the organisation's core functions. Employers who align their fixed-term contracts with these considerations are better placed to mitigate disputes and limit potential legal exposure.

## DISCLAIMER

*This alert is for informational purposes only and should not be considered or interpreted as legal advice. If you have any questions or require clarification, please feel free to contact the authors Sandra Kavagi, Partner ([sandra@oraro.co.ke](mailto:sandra@oraro.co.ke)) and Kelvin Jumah, Associate ([kelvin@oraro.co.ke](mailto:kelvin@oraro.co.ke)) – or your usual contact at our firm for legal guidance.*

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