

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

PETITION NO. 3 OF 2014

(Formerly Petition No. 602 of 2013 in the High Court at Nairobi)

PROFESSOR ELIJAH BIAMAPETITIONER

-VERSUS-

UNIVERSITY OF ELDORET.....1ST RESPONDENT

**CABINET SECRETARY, MINISTRY OF EDUCATION.....2ND
RESPONDENT**

PROFESSOR TERESA AKENGA.....3RD RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 19th September, 2014)

CORRECTION OF ERROR IN THE JUDGMENT

The judgment was delivered in the case on Friday 19.09.2014. The court in determining the 1st issue in dispute stated as follows:

“The 1st issue for determination is whether the petitioner has valid claims under the contract of service as the Principal of Chepkoilel University College. The court finds that upon the elevation of the Chepkoilel University College to a fully fledged university under the name University of Eldoret, the office of Principal as held by the petitioner was thereby abolished. The abolition of the office, in the opinion of the court, was an overriding circumstance that superseded any claims by the petitioner to continued employment in the office of Principal. The court finds that the petitioner served as a Principal from 24.06.2011 to 11.02.2013 and the termination of appointment by reason of abolition of office was subject to the termination clause 1 in the letter of appointment dated 26.07.2011. The clause provided thus, “...the Council may terminate your appointment by giving six months’ notice in writing of such termination.” The court finds that the parties were bound by that agreement and further finds that the claimant was not accorded the six months notice and is entitled to 6 months’ salaries at the rate of the petitioner’s prevailing monthly salary at end of January, 2013. The court has carefully considered the redundancy situation under which the petitioner ceased to serve as a Principal. It is clear that the petitioner was entitled to terminal dues as envisaged in section 40 of the Employment Act, 2007 being pay in lieu of due leave not taken (30 days), pay of one month notice, and severance pay for 15 days for the one complete year served as a principal. The court finds that the petitioner is entitled accordingly. As the court has found that the petitioner’s service as Principal was to be terminated in accordance with the contract and section 40 of the Employment Act, 2007, the court finds that the claim and prayer for salary for the remaining contract period of three years on the basis of the contract of service as Principal was misconceived and the prayer shall fail. The court finds that the petitioner is entitled as found due by the court and subsequent to the termination of service as Principal especially in view of the prayer for such order or further orders as the honourable court shall consider appropriate.”

The findings were erroneously not included in the final orders made in the Judgment. In exercise of the court’s powers to correct errors in judgment of its own motion, the judgment is corrected by adding after order 2 (c) thus, **“(d) 6 months’ salaries at the rate of the petitioner’s prevailing monthly salary at**

end of January, 2013.”

In conclusion, the judgment is corrected accordingly with orders:

- a. The judgment is corrected by adding after order 2 (c) in the judgment thus, “(d) **6 months’ salaries at the rate of the petitioner’s prevailing monthly salary at end of January, 2013.”**
- b. The deputy registrar to serve upon the parties this correction of error in the judgment by 26.09.2014.

Signed, dated and delivered in court at Nakuru this Tuesday, 24th September, 2014 in absence of all the parties.

BYRAM ONGAYA

JUDGE