



**KENYATTA NATIONAL HOSPITAL.....**  
**.....PLAINTIFF**

**VERSUS**

**DR. JACINTA MAINA.....DEFENDANT**

**JUDGMENT**

The plaintiff applied for a job with the defendant. By letter dated 15<sup>th</sup> May 1992 she was offered a job as a Medical Officer. On 10<sup>th</sup> July 1994, she applied to the Chairman KNH Training Committee for sponsorship for Master of Public Health. The letter stated as follows:-

“I have been working as a medical officer in Casualty Department since I completed my internship in 1987.

I am interested in further medical education so that I would be better equipped to offer services at this hospital. I have applied for Master of Public Health Hospital Administration at John Hopkins University, Mary land USA (See attached documents)

I have been promised admission to the University for 1994-1995 Academic Year subject to the availability of sponsorship for the course. I kindly request Kenyatta National Hospital to avail for me sponsorship to cover both tuition and living expenses.

Thank you

Yours sincerely

Dr. Jacinta Maina -P/NO.7527536

Medical Officer

Casualty Department

The plaintiff approved her application and sponsored the defendant and paid for her full tuition and

living expenses amounting to US\$38827.

The plaintiff also sponsored and paid full tuition and living expenses for other 5 employees of the Kenyatta National Hospital in different Universities as indicated in Exhibit D-6.

The payment for the defendant was acknowledged by the University. She travelled to USA and commenced her studies. While she was away her mother died and her son who was living with her was expelled from school. She wrote the University and sought to take leave from her academic work which leave was granted so that she could travel back home to attend to her said personal problems. The University agreed to allow her to take an academic leave in order to attend to those problems with an understanding that she could resume, her studies any time within the next three years.

On 18<sup>th</sup> December 1995 she wrote the defendant explaining the circumstances that led to her discontinuation of her overseas training. On 28<sup>th</sup> December 1995 the defendant wrote the plaintiff a letter which read as follows:

Dr. Jacinta Maina

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The Head

Casualty Department

Kenyatta National Hospital

RE: POSTPONMENT OF OVERSEAS TRAINING

It has been learnt that you have discontinued your overseas training due to personal problems.

Please explain to this office and attach supportive documents, also forward to this office an agreement made between yourself and John Hopkins School of Hygiene and Public Health in regards to your going back to do the same course and the safety of funds paid for your course by Kenyatta National Hospital.

Please expedite.

F.K. Muigai

For: Personal and Training Manager

She wrote back and on 10<sup>th</sup> February 1996 stated the unutilized balances:

1. Copy of balance of tuition fees from John Hopkins University of 20159 US\$.
2. The leaving and personal expenses allowance was in her Bank Account No.4337.1700.0632.2298 National Bank of Baltimore and she sought advice from the defendant of what to do with the above funds.

She was written by the plaintiff on 29<sup>th</sup> April 1996 to state what arrangement she had made to refund the said unutilized balances to the plaintiff.

The defendant wrote back on 5<sup>th</sup> June 1996 informing the plaintiff that as she intended to go back to John Hopkins University to pursue her studies it would not be wise to refund the said unutilized balances. But on 30<sup>th</sup> July 1996 she decided to refund the balance of unutilized subsistence allowance of 7200 US\$ which was equivalent of Shs.404,640/= though she still maintained that she would go back to resume her studies at John Hopkins University.

On 26<sup>th</sup> July 1996 the plaintiff wrote the defendant informing her that it had cancelled her master of Public Health Training at John Hopkins University.

On 22<sup>nd</sup> July 1996 the plaintiff wrote John Hopkins University informing them that the defendant was unable to continue with her studies due to unavoidable circumstances and the plaintiff had therefore cancelled the training and requested the University to refund the unutilized tuition fees as the defendant had only been there for 4 months.

The plaintiff demanded that the defendant refunds to it the unutilized balances which amounted to Shs.1,270,688.50. The defendant in her evidence denied that she owes the plaintiff any money.

But she admits that she was employed by the plaintiff and that she applied to it for sponsorship and the plaintiff paid the University the alleged tuition fees as well as personal expenses allowance but she stated that that money belonged to the World Bank and not the plaintiff. She concedes that she was at the University for only 4 months instead of 12 months and that the unutilized balance which is the subject matter of this suit was refunded to her by the University.

But the unutilized balance of the personal allowance amount is with the KCB Kipande House Branch where it is still retained because her account in that bank was frozen through instruction from the plaintiff due to this dispute.

The defendant admitted that she was sponsored for her further studies at John Hopkins University and the money was paid through the plaintiff. She also admitted that she discontinued her studies due to personal problem after only 4 months and the balance of the money was refunded to her less 7200 US\$ which she has already refunded, she has no claim over that unutilized balance since the same was not used for the purpose it was given. For the court to allow the defendant to retain the unutilized money which was refunded to her would amount to unfair enrichment.

The plaintiff has proved its case as claim.

Accordingly there shall be judgment for the plaintiff and against the defendant for Shs.1,270,688.30 with costs and interest.

It is further ordered that the order to frozen the defendant's Account NO. 981 000 4225 at the KCB Kipande House Branch was unlawful and the same is reviewed and vacated and the defendant to have free access to the same with immediate effect. The balance in the Account to be released to her plus interest.

Dated and delivered at Nairobi this 14<sup>th</sup> day of September 2006.

**J.L.A. OSIEMO**

**JUDGE**