



**Mirera v University of Nairobi (Civil Suit 1010 of 2006)
[2025] KEHC 1819 (KLR) (Civ) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1819 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL SUIT 1010 OF 2006**

JN MULWA, J

FEBRUARY 20, 2025

BETWEEN

TERESA MIRERA PLAINTIFF

AND

UNIVERSITY OF NAIROBI DEFENDANT

JUDGMENT

1. By a Plaint dated 21st September 2006 and filed on 22nd September 2006, the Plaintiff sought against the defendant the following reliefs :
 1. Special damages in the sum of Kshs.63,000/=
 2. General damages.
 3. Costs and interests of this suit.
2. The Defendant filed its statement of defence dated 18th October 2006 on 25th October 2006.

Plaintiff's Case

3. The plaintiff testified as PW1.

She adopted her witness statement dated 2/7/2012 as her evidence in chief and produced documents dated 18/10/2017.

On Cross examination by Counsel Lutta for the Defendant, she stated that she knew of the vacancy at the University through an Advertisement on 8th August 2003 in the Newspaper and upon perusal, found that she did not have the qualifications as advertised, being in possession of grade C, that she



had D+ and a Certificate and not a Degree or Diploma, and added that she did not have a Certificate equivalent to Degree or Diploma.

4. It was her testimony that she did not ask the meaning of the Provisional admission letter dated 23/9/2003 but that she understood it to mean that it was provisional but she did not know what it meant; and that she reported at the University without the senate's approval as she found it prudent to report to the University and start classes without the senate's approval or the admission letter, and despite following the matter with the Academic Registrar, no admission letter was issued to her.
5. PW1 testified further that a letter from the defendant stated that she was admissible but not admitted as the minimum qualification was C+ and that she did not get a C in any subject in Biological Sciences, as a requirement for admission.

The Plaintiff stated that she did not sit for any exam at the University for lack of registration as a student and lack of a student card for the two month period for which she paid Kshs. 63,000/= as fees.

6. It was her assertion that she did not sue the University for discontinuing her studies, as she stopped going to the University because she wanted to pursue registration first as she was not registered.
7. On the claim for refund of alleged fees of khs 63,000/= she stated that she did not submit the original receipts for reimbursement, and on the claim for damages, the plaintiff testified that she suffered loss and damage; that she was embarrassed, and was emotionally distressed, but offered no proof. In addition, the plaintiff stated that her studies were discontinued without justifiable cause and that she suffered mental anguish.
8. PW2 was Julius Mugoya, the Plaintiff's husband married to her in 1997. He testified that he paid school fees for the 1st quarter, application fees and other charges in total Kshs. 67,000/= and asserted that the plaintiff was qualified for the course as per the advertisement for the course except for clause 3. He stated that the provisional admission letter was signed by Prof. Kiama, then the associate Dean faculty of Veterinary Medicine.
9. In Cross – Examination by Mr. Lutta Advocate for the defendant, PW1 stated that Plaintiff was his wife but he provided nothing to the court to show that he made the said payments to the University and did not have copies of receipts or cheques. He also testified that he was aware that the plaintiff did not have minimum C+ and that she had obtained a D+ in KCSC Examination.
10. In Re - examination, PW2 testified that the plaintiff met criteria No. 3. in the advertisement hence started going for lectures in September 2003 up to December 2003 on the strength of the provisional letter of admission.

Defendant's case.

11. DW1 was Mr. Humphrey Obulumbi Webuye, the Academic Registrar of the University who stated that he was aware of the case having worked for the defendant from 1997 in various capacities. He relied on his witness statement dated 20/4/2016.
12. His evidence was that it is the Academic Registrar who is authorized to admit and issue admission letters to students; that he participated in the Senate meeting for admission of students; the plaintiff did not meet all the requirements to qualify for admission to the course advertised when it was first presented to the Senate. Additionally he confirmed that the basic qualification for University of Nairobi admissions is C+ and above, and that the reason for not admitting the Plaintiff was that she had a D+ way below the minimum requirement for admission.



13. He clarified that being admissible means it is a recommendation from the faculty but when the qualifications are submitted to the senate for interrogation, it found that the plaintiff did not meet criteria 3.
14. Upon cross- examination by Mr. Nganga Advocate for the plaintiff, DW1 stated that the letter dated 23/9/2003 was written by Dr. Kiama, now the vice chancellor of the University. The applicant was told to wait for an invitation letter from the Academic Registrar but expected to report for registration on 29/9/2003 and asked to complete forms and return them on 29/9/2003; that this was not enough for admission because faculties do not admit, and therefore it was an error on its part to have issued the letter dated 23/9/2003.
15. DW1 stated that no disciplinary process was taken against Dr. Kiama because it was only a letter as the admission would only commence once a student was admitted. He further clarified that any of the qualifications means having basic qualifications for university admission; that the advert did not state that C+ was mandatory qualification in KCSE University qualification; the general public was informed of basic academic qualification for admission to the University.
16. Additionally DWI submitted that in addition to the above, the cluster for the vacancy was stated as two principles of advanced level, one in Biology, and at Criteria 3, a Degree, Diploma, Certificate in Science laboratory, and at Criteria 4, Diploma in Animal Health.
17. In response to why Dr. (Prof) Kiama was not sued for administrative errors, he stated that the University has regulations on administrative errors, and that the University communicated the error and regretted the same. On the payment of Kshs.65,000/=allegedly paid to the University as fees, the witness did not know whether it was paid or not, and it requested submission of the payment receipts for scrutiny.

Re- examination.

18. DW1 stated that there are four main categories for eligibility for admission at the University by candidates and they ought to meet the minimum qualifications.

The Plaintiff's Submissions.

19. The Plaintiff submitted that pursuant to the Defendant's said advertisement, she duly applied to be considered for the course by completing the relevant application form and lodged it with the Defendant on 1st September 2003.

It is the Plaintiff's submission that the Defendant then wrote to her by a letter dated 23rd September 2003 informing her that she was admissible for the course and advised her to report to its Upper Kabete Campus on 29th September 2003 for registration and orientation. In the same letter, the Defendant also advised the Plaintiff that lectures would commence on 6th October 2003.

That after registration and orientation, the Plaintiff was advised to pay to the Defendant the 1st Semester school fees amounting to Kshs. 63,000/= which she duly paid on 30th September 2003. The Plaintiff submitted that thereafter, she began attending lectures at the Defendant's college from 6th October 2003 as advised by the Defendant which she did for a better part of the 1st Semester before the Defendant suddenly discontinued her from the program without offering the Plaintiff any reason or justifiable grounds.



20. It is the Plaintiff's further submission that despite making several inquiries with the Defendant as to why her studies were discontinued, the Defendant chose to remain quiet until sometimes in May 2004 when the Defendant was served with a demand letter by the Plaintiff's previous Advocate on record.
- The Plaintiff in its submission contends that the Defendant's act and manner of discontinuing her studies was unjustified, in-humane, embarrassing, and has caused her immense anguish and that the same was against the tenets of natural justice.
- Consequently, and as a result of the Defendant's actions, the Plaintiff suffered loss and damage, hence institution of the present suit.
21. It is the Plaintiff's submission that she is entitled to the reliefs sought, and urged the Court to find that the Defendant is 100% liable for the loss and damage incurred by the Plaintiff due to their own actions and/or inactions.
22. The Plaintiff further urged the Court to find that the claim for special damages has been proved by the Plaintiff and proceed to grant the same.
23. The Plaintiff while seeking general damages and costs as well as interests of the suit sought to rely on the case of DAK V Eldoret College Of Professional Studies & Another (Constitutional Petition 13 Of 2020) [2022] KEHC 16750 (KLR) (23 December 2022) where the Learned Judge found it fit to award general damages in the sum of Kshs.1,000,000/= to the aggrieved party in circumstances similar to that of the Plaintiff herein.
24. In the end the Plaintiff prayed that the Court find merit in the plaintiff's claim for general damages and proceed to exercise its unfettered jurisdiction of granting a global sum of Kshs.1,200,000/= in the award of general damages.

Defendant's submissions

25. The defendant submitted on three main grounds as follows:
- i. The Plaintiff was not qualified for admission to the defendant degree program as advertised.
 - ii. The Plaintiff was not admitted to the defendant's degree program.
 - iii. The defendant's letter dated 23/9/2003 to the Plaintiff referenced as Provisional Admission was not an admission letter but was information to the plaintiff that she was admissible .
26. The Defendant in its submission urged the Court to note the following points that;
- a. The Plaintiff was never admitted to the University as a student and as such could not be discontinued having been denied admission. Plaintiff's ExB 6 clearly states she was refused admission.
 - b. The Plaintiff admitted in the Plaintiff that the letter dated 23rd September 2003 communicated that she was admissible and NOT that she was admitted to the University.
 - c. The Defendant's letter dated 23rd September 2003 informing the Plaintiff to report to campus was made in error as only the Academic Registrar is authorized to communicate admission of a student to the University. Indeed the letter communicated to the plaintiff that she was to get an invitation letter from the Academic Registrar at a later date. No such letter was sent to the plaintiff from the Academic Registrar.
 - d. Admissions to the University are done by the Deans Committee.



- e. The Plaintiff was not admitted to study the desired course by virtue of the fact that her KCSE qualifications were D+ below the C+ grade and at least C (plain) in any of the required Science subjects as advertised at Page 8 on WHO SHOULD APPLY NO. 1 in the Defendant's List of Documents dated 17th September 2014.
- f. The Plaintiff ought to have mitigated the error by holding off attending classes until she got an admission letter from the Academic Registrar as communicated earlier.
- g. The Plaintiff had a duty to follow up on the Admission Letter with the Academic Registrar upon not receiving the same. She therefore perpetuated the error by the University.
- h. The defendant's advertisement inviting eligible applicants to make applications was an offer and the University reserved the right to choose who to admit.
- i. The advertisement by the Defendant had a consultation clause which the Plaintiff could use for clarification in the application process.
- j. If the plaintiff had met the requirements, she should have instituted this instant claim under Judicial Review for an order compelling the defendant to admit her to the University as a qualified applicant.

Issues for determination.

1. Whether the Plaintiff is entitled to the reliefs sought?
2. Whether the Plaintiff was admitted to the University?

Analysis and determination

1. Whether the Plaintiff is entitled to the reliefs sought?
 2. costs.
27. A careful interrogation of the events starting with the advertisement of the Degree Course-BSC-Biomedical Laboratory Technology by the defendant in the Daily Nation Newspaper in August 2003, it is evident that the Plaintiff did not meet the criteria for admission. This fact was expressly admitted by the plaintiff in her evidence in chief as well as in cross-examination. DW2, the plaintiff's husband who alleged to have paid Kshs. 67,000/= fees for the plaintiff to the defendant also confirmed that the plaintiff did not meet all the requirements and in particular criteria no. 3 as stated in the advertisement.
28. The only twig that the plaintiff hangs on to prove her case against the defendant is the letter dated 23rd September 2003.
- Each of the rival parties gave different interpretations to the said letter to buttress their cases.
29. The Plaintiff on the strength of the said letter without waiting to receive the invitation letter from the Academic Registrar as advised therein. In her evidence before the court she stated that she found it prudent to report for lectures while waiting for the letter of admission. This action by the plaintiff was furthered by the Faculty dean, Dr. Kiama who in the said letter that she was expected to report to the university for registration, which she did. This letter was thereafter found to have been written in error and reasons stated by the Academic Registrar who testified that he was the only one with authority to issue admission letters to qualified persons to undertake the course advertised upon approval by the University senate.



30. Further, this court is persuaded by the defendants submissions stated at paragraph 26, and are repeated here for ease of reference as follows:

The Defendant in its submission urged the Court to note the following points that;

- a. The Plaintiff was never admitted to the University as a student and as such could not be discontinued having been denied admission. Plaintiff's ExB 6 clearly states she was refused admission.
 - b. The Plaintiff admitted in the Plaintiff that the letter dated 23rd September 2003 communicated that she was admissible and NOT that she was admitted to the University.
 - c. The Defendant's letter dated 23rd September 2003 informing the Plaintiff to report to campus was made in error as only the Academic Registrar is authorized to communicate admission of a student to the University. Indeed the letter communicated to the plaintiff that she was to get an invitation letter from the Academic Registrar at a letter date. No such letter was send to the plaintiff from the Academic Registrar.
 - d. Admissions to the University are done by the Deans Committee.
 - e. The Plaintiff was not admitted to study the desired course by virtue of the fact that her KCSE qualifications were D+ below the C+ grade and at least C (plain) in any of the required Science subjects as advertised at Page 8 on who should apply no. 1 in the Defendant's List of Documents dated 17th September 2014.
 - f. The Plaintiff ought to have mitigated the error by holding off attending classes until she got an admission letter from the Academic Registrar as communicated earlier.
 - g. The Plaintiff had a duty to follow up on the Admission Letter with the Academic Registrar upon not receiving the same. She therefore perpetuated the error by the University.
 - h. The defendant's advertisement inviting eligible applicants to make applications was an offer and the University reserved the right to choose who to admit.
 - i. The advertisement by the Defendant had a consultation clause which the Plaintiff could use for clarification in the application process.
 - j. If the plaintiff had met the requirements, she should have instituted this instant claim under Judicial Review for an order compelling the defendant to admit her to the University as a qualified applicant.
31. The Plaintiff submitted that two months of attending classes, and without any notice or any justification, the Defendant discontinued her from the program and declined to inform her about her fate, despite her many requests and pleas to the defendant. No evidence of follow up with the Academic Registrar was demonstrated. The Plaintiff in her evidence and cross-examination testified that she indeed did not provide the defendant with a diploma certificate, and was not discontinued from the university but stopped attending classes as she was not registered, to follow registration first. This is a clear admission by the plaintiff that she started attending classes before registering herself as a student, and a further confirmation that the plaintiff was neither admitted to the University nor discontinued from the university as registration would only follow admission, and not vice versa.



Reliefs sought by the plaintiff in her plaint

32. On the relief of general damages, the defendant relied on the case of DAK v. Eldoret College of Professional Studies & Another (2022) eKLR to submit that the Plaintiff attended the lectures in the University for two months, wasted her time and suffered emotional stress when she was discontinued. During hearing of the suit, the Plaintiff admitted that if the public was made aware of her discontinuation from the University, then the information could only have come or disseminated by herself. On the other hand, defendant submitted that the case of DAK vs Eldoret College of Professional Studies (supra) relied on by the Plaintiff does not apply in the instant case, as circumstances were different as it was a petition in which the court awarded general damages for violation of the Petitioner's constitutional rights.
33. The Defendant sought to rely on the case of Patrick Kimathi Kimuchena -vs- Kenya Railways [2011] eKLR in which the Honourable Court opined that the facts of each case should be considered independently and placed reliance on Halsbury's Laws of England 4th Edition Volume 5 (1) which states:
- “....No damages are recoverable for mere vexation and disappointment caused by the delay, but damages may be recovered for real inconvenience which is appreciable and capable of being specifically stated....”
34. In the premises and circumstances, the court finds that the plaintiff has not placed before the court any ascertainable damages that may have been caused to her emotionally or otherwise by actions of the defendant. None will be awarded.
35. Special damages are awarded if specifically pleaded and proved. Though pleaded in the sum of Kshs. 63,000/= the plaintiff failed to provide proof that the same were paid to the defendant as fees. Despite the defendant requesting the plaintiff to provide payment receipts for reimbursement even during the hearing of the case, none were provided.
36. This claim fails as well.
37. In the end, the court comes to a finding that the plaintiff has failed to prove her case against the defendant to the required standard of proof; on a balance of probabilities.

The case is dismissed. Each party shall bear its own costs of the suit

DELIVERED DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2025

.....
JANET MULWA.
JUDGE

