



**Kisii University v Orere (Appeal E022 of 2023)  
[2024] KEELRC 1247 (KLR) (15 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1247 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E022 OF 2023**

**S RADIDO, J  
MAY 15, 2024**

**BETWEEN**

**KISII UNIVERSITY ..... APPELLANT**

**AND**

**JULIUS ORINA ORERE ..... RESPONDENT**

*(Being an Appeal from the judgment of Hon CA. Ocharo Senior Principal  
Magistrate delivered in Kisii CM ELRC No. 7 of 2019 on 24 March 2023)*

**JUDGMENT**

1. Kisii University (the Appellant) lodged a Memorandum of Appeal with this Court on 20 April 2023, contending:
  - i. The Learned Trial Magistrate erred in allowing the Respondent's claim against the weight of evidence.
  - ii. The Learned Trial Magistrate erred in law and in fact in holding that the Respondent had established a case against the Appellant contrary to the evidence on record.
  - iii. The Learned Trial Magistrate erred in law and in fact in failing to evaluate, consider and determine all the issues raised in the pleadings and in the evidence hence an erroneous judgment.
  - iv. THAT the Learned Trial Magistrate erred in allowing claims that were time-barred.
  - v. THAT the Learned Trial Magistrate erred in finding that the procedure for finding that the claim for claiming payment was introduced in 2020 against the evidence presented which showed that the procedure for claiming payment was in existence prior to 2020 and in particular during the Respondent's employment.



- vi. THAT the Learned Trial Magistrate erred in failing to appreciate that the Respondent had internal laid down procedure for claiming payments which the Respondent did not follow yet the trial Court allowed the Respondent's claim.
- vii. THAT the Learned Trial Magistrate erred in giving ambiguous and contradictory orders.
2. The Record of Appeal was filed on 11 April 2024, and the Court gave directions on 15 April 2024.
3. The Appellant filed its submissions on 25 April 2024. The Respondent's submissions were not on record by the agreed timeline.
4. The Court has considered the Record of Appeal and submissions.

### **The Role of the Court on a first Appeal**

5. The role of a first appellate Court on appeal was discussed in *Kamau v Mungai (2006)* 1 KLR 150, where it was held that:  

this being a first appeal, it was the duty of the Court.... To re-evaluate the evidence, assess it and reach its own conclusions remembering that it had neither seen nor heard the witnesses and hence making due allowance for that.
6. This Court will bear in mind the interdict on its role.

### **Limitation**

7. The Respondent sued the Appellant asserting breach of contract (failure to pay agreed remuneration from September 2015 to May 2017).
8. Before the Senior Principal Magistrate, the Appellant raised a plea of limitation in respect to the claims made by the Respondent for the period September 2015 to May 2016.
9. The Senior Principal Magistrate considered the limitation plea and found that claims up to April 2016 amounting to Kshs 95,000/- were time-barred.
10. In the Appeal, the Appellant contends that the entire claim was caught up by the limitation prescription in section 90 of the *Employment Act*, 2007.
11. It is not in dispute that the Respondent claimed breach of contract up to May 2017. He sued the Appellant on 27 May 2019.
12. Clearly, the claims from May 2016 to May 2017 were made within the prescribed 3 years and the Senior Principal Magistrate did not err in considering the same.

### **Proof of claim for Kshs 606,336/-**

13. The Senior Principal Magistrate allowed the Respondent's claim for Kshs 606,336/- and the reasons she gave were in brief, that the Appellant had admitted the head of the claim; the Appellant could not have made partial payment in April and December 2017 if the Respondent had not submitted the requisite claim forms and that the claim processing system advanced in Court was introduced in 2020 after the Respondent had separated with the Appellant.
14. The Appellant's witness admitted during cross-examination that part payment was made to the Respondent and that the part payment would not have been made if the Respondent had not submitted a claim.



15. The Appellant made part-payment to the Respondent in April and December 2017.
16. The Court has also looked at the copies of the Circular by the Appellant on the processing of claims made by part-time lecturers.
17. The Circular is dated 4 September 2018, nearly a year outside the claims made by the Respondent. The Circular having come after the Respondent had fulfilled his part of the contract cannot be used to deny him his entitlements.
18. This Court, therefore, finds that the Senior Principal Magistrate did not err in allowing this limb of the claim.

### **Conclusion and Orders**

19. Flowing from the above, the Court finds no merit in the Appeal and it is dismissed with costs to the Respondent.

Delivered virtually, dated and signed in Kisumu on this 15<sup>th</sup> day of May 2024.

**RADIDO STEPHEN, MCI Arb**

**Judge**

**Appearances**

For Appellant Nyairo & Co. Advocates

For Respondent S.B. Mbeche & Co. Advocates

Court Assistant Chemwolo

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