



**Wachira v Egerton University (Currently Laikipia University) (Cause 284 of 2015) [2024] KEELRC 2242 (KLR) (18 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2242 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 284 OF 2015  
DN NDERITU, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**DAVID MWANGI WACHIRA ..... CLAIMANT**

**AND**

**EGERTON UNIVERSITY (CURRENTLY LAIKIPIA UNIVERSITY) ..... RESPONDENT**

**JUDGMENT**

**I. Introduction**

1. The claimant commenced this cause alongside other two individuals by way of a memorandum of claim dated 28<sup>th</sup> September, 2015 through Ndeda & Associates Advocates. However, along the way the other two claimants, Kennedy Simiyu Murunga and Peter Njiri Mukunya, filed separate causes leaving the claimant herein as the sole claimant.
2. The record and the pleadings show that the claim was originally filed against Egerton University wherein the now Laikipia University was a constituent college before the latter subsequently became a duly constituted and chartered public university. Curiously, the claimant did not amend the claim accordingly to exclude his co-claimants and take care of the change of the status of the employer. The court shall deal with this issue and the consequences thereof in a subsequent part of this judgment.
3. As it is the procedure, the statement of claim is accompanied with a verifying affidavit sworn by the claimant, a list of witness, a written statement by the claimant, a list of documents, and a bundle of copies of the listed documents.
4. The claimant is seeking for the following reliefs –
  - a. 3 months’ pay in lieu of notice – Kshs41,088.00/-
  - b. Gratuity (unpaid N.S.S.F) for 13 years – shs164,354.00/-



- c. Annual Leave 12 years – Kshs82,176.00/-
  - d. Underpayment of wages – Kshs2,850,192.00/-
  - e. Compensation Section 49(1)(c) of the *Employment Act*.
  - f. The respondents to issue the claimant with a Certificate of service in the meaning of Section 51 of the *Employment Act*.
  - g. The respondents to pay costs of this suit.
5. The respondent entered appearance through Mwangi, Mukira & Co. Advocates and filed a memorandum of defence on 27<sup>th</sup> March, 2017. In the memorandum of defence the respondent denies liability and prays that the claimant’s suit be dismissed with costs for want of merits.
  6. Alongside the defence, the respondent filed a list of documents and a bundle of copies of the listed documents. A witness statement by Mugo Mureithi (RW1) was filed as well.
  7. After a prolonged delay the claimant’s case was heard on 6<sup>th</sup> and 27<sup>th</sup> November, 2023, when the claimant (CW1) testified and closed his case. The defence was heard on 27<sup>th</sup> November, 2023 when RW1 testified and the respondent’s case was closed.
  8. Counsel for both parties addressed the court by way of written submissions. Miss Awuor for the claimant filed written submissions on 19<sup>th</sup> December, 2023 while Mr Ndichu for the respondent filed on 31<sup>st</sup> January, 2024.

## **II. The Claimant’s Case**

9. The claimant’s case is expressed in the memorandum of claim, the oral and documentary evidence adduced by the claimant (CW1), and the written submissions by his counsel.
10. In the memorandum of claim, the claimant avers that he was casually engaged by the respondent, a public university, in 1999 as a harvest assistant earning Kshs72/= per day. It is pleaded that by 2001 the claimant was allocated a new role of herding and milking cows at Kshs88/= per day translating to Kshs2,460/= per month.
11. It is pleaded that between 2002 and June, 2012 the claimant worked on short-term contracts. It is further pleaded that for the entire period of service the claimant was not allowed to take leave or rest on public holidays.
12. It is pleaded that on 26<sup>th</sup> June, 2012 the respondent unfairly and unlawfully terminated the claimant. It is pleaded that as at the time of dismissal the respondent purported to unilaterally change the terms of engagement by converting what was by then permanent employment into a short-term contract of three months. It is further pleaded that as at the time of termination the claimant had served the respondent for over 12 years yet the respondent did not and is not willing to pay any terminal benefits for the years that the claimant had already served.
13. It is pleaded that when the claimant protested the unilateral decision by the respondent to convert his employment into a short-term contract the respondent allegedly became hostile and purported not to renew the contract hence terminating him.
14. In his testimony the claimant relied on his memorandum of claim having not filed a written statement. The court ordered the claimant to proceed without the statement as the matter would have continued to clog the system had an adjournment sought to file the statement been allowed.



15. The claimant reiterated the contents in the memorandum of claim stating that from 2001 when he was allocated duties as a herder and milking he started earning a monthly salary for the next 12 years. He stated that he was a member of a trade union, KUDHEIHA, and that he served the respondent with a clean disciplinary record.
16. The claimant further testified that on 29<sup>th</sup> June, 2012 he was summoned by the farm manager and instructed to sign a purported letter of permanent and pensionable employment only to be informed later that he had been terminated without a hearing. He stated that the dismissal was disguised as an expiry of his contract which he allegedly signed without reading and or being informed of the contents thereof by the manager.
17. The claimant produced the copies of the documents in his filed bundle as exhibits.
18. In cross-examination the claimant admitted that though paid monthly his pay was based on a daily rate. He further admitted that on 26<sup>th</sup> June, 2012 he signed a contract but maintained that he neither reads nor writes in English and that the above contract was signed on misrepresentation and deception by the manager who informed him that the contract was intended to confirm and cement his permanent employment status. He stated that he signed that contract on 3<sup>rd</sup> July, 2012 wherein he was to earn a consolidated salary of Kshs10,178/= for a period of three months.
19. He admitted that going by the above contract, which he however terms illegal, his employment came to an end upon expiry of the contract as the same was not extended. He admitted that he had no evidence of membership in the union as pleaded.
20. In response to clarification sought by the court the claimant stated that he is a class 8 drop-out and that he scored a D in his final exam in 1997.
21. It is on the basis on the foregoing that the claimant is seeking that judgment be entered in his favour as prayed in the memorandum of claim with costs.

### **III. The Respondent's Case**

22. The respondents' case is founded on the filed defence, the oral and documentary evidence by RW1, a deputy registrar administration and human resources capital of the respondent, and the written submissions by its counsel.
23. In the defence the respondent avers that the claimant was not terminated but his contract expired. It is pleaded that the claimant was engaged as a casual in the horticulture department in September, 2001 and not in 1999 as alleged by the claimant.
24. It is denied that the claimant was a member of the trade union as claimed and or that he was covered to benefit from any collective bargaining agreement (CBA).
25. It is pleaded that prior to the signing of the three months contract that expired on 28<sup>th</sup> September, 2012 and marked the end of the claimant's employment with the respondent, the claimant was a casual working for less than 15 days a month and for no more than a maximum of eight hours per day.
26. It is pleaded that the three months contract that expired on 28<sup>th</sup> September, 2012 was mutually and freely executed and the allegation by the claimant that he was deceived into executing the same is an afterthought intended to defraud the respondent and earn the sympathy of the court with a view of unjustly enriching himself. It is denied that the claimant is entitled to any of the reliefs sought.



27. In his evidence in court RW1 relied on his filed written statement dated 13<sup>th</sup> March, 2017 as his evidence-in-chief. He stated that all the documents that the respondent wished to rely on had been produced as exhibits by the claimant. He reiterated that the claimant was not terminated but rather his contract expired by effluxion of time.
28. In cross-examination, RW1 stated that he is essentially the human resources manager for the respondent. He stated that prior to the contract that expired as above the claimant was a casual worker engaged on need-basis from 2001.
29. He stated that the Laikipia University became a public university in February, 2013 as before that date it was a constituent college of Egerton University.
30. He stated that the claimant was owed no terminal dues as at the time of expiry of the contract and that the contract was entered into lawfully and the claimant executed the same with full knowledge of the terms and conditions therein.
31. It is on the basis of the foregoing that the respondent prays that the claimant's cause be dismissed with costs.

#### **IV. Submissions**

32. The claimant's counsel did not identify any specific issues for determination but instead submitted generally on the evidence adduced and the law applicable urging the court to find in favour of the claimant and relieve him as pleaded.
33. Counsel submitted that between 1999 and June, 2012 the claimant was a regular employee of the respondent on month to month basis. It is further submitted that on 26<sup>th</sup> June, 2012 the respondent's farm manager tricked the claimant into signing a short three-months contract that ended on 28<sup>th</sup> September, 2012. It is the claimant's counsel submission that the short-term contract was invalid and unlawful.
34. On the other hand, counsel for the respondent identified three issues for determination –
  - a. Whether the claimant was terminated from employment by the respondent or his contract of service had expired.
  - b. Whether the claimant is entitled for the reliefs sought in the memorandum of claims.
  - c. Who bears the costs of this suit.
35. On the first issue, it is submitted that the claimant was not terminated but his contract expired on 28<sup>th</sup> September, 2012. It is submitted that the respondent was under no obligation to renew the contract. It is further submitted that prior to 26<sup>th</sup> June, 2012 the claimant was a casual. It is further submitted that as at the time of filing the cause in court three years has lapsed and as such any claim based on the employment relationship between the claimant and the respondent prior to 26<sup>th</sup> June, 2012 is time barred by operation of the law.
36. The court is urged to dismiss the claim with costs for want of merits.

#### **V. Issues for Determination**

37. The court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered by both sides, and the written submissions by counsel for both parties. The following issues commend themselves to the court for determination -



- a. Is the claimant's claim properly before the court?
- b. What was the nature of the employment relationship between the parties herein as at the time the claimant stopped working for the respondent?
- c. Was the claimant unfairly and unlawfully terminated as alleged and claimed?
- d. Is the claimant entitled to the reliefs sought?
- e. Costs.

## VI. The Cause

38. The court decries the quality of the pleadings filed and particularly the memorandum of claim which is to a great extent composed of evidence which should properly come before the court by way of oral evidence. The rules on pleadings are that the statement of claim should contain brief and concise statements of facts and the law. Unfortunately, the memorandum of claim filed is more or less submissions on unsubstantiated and unproved allegations – See Rule 4 of the Employment and Labour Relations Court Rules.
39. Be that as it may, the court has raised the first issue for determination on two major and fundamental grounds. Firstly, when this cause was filed in 2015 the respondent was indicated as Egerton University, with a rider, “currently Laikipia University.” The evidence on record is that prior to obtaining its own charter and becoming a fully-fledged university Laikipia University was a constituent college of Egerton University. Going by the evidence of RW1 Laikipia University became an independent public university upon obtaining its charter in February, 2013.
40. What the above means is that as at the time of filing the claim in court in September, 2015 Laikipia University existed with its own charter and legal identity. The implication of this is that there is no way that the claimant would have been an employee of Laikipia University as at the time he stopped working in September, 2012 this university had not been lawfully constituted. The question that arises then is – who is the respondent in this cause? The claimant did not at any point amend his pleadings to reflect exactly which of the two legal entities he wished to pursue. To that extent the claim herein is not only ambiguous but also improperly filed.
41. The second reason why the court has raised this issue for determination is that while the original memorandum of claim is date-stamped 28<sup>th</sup> September, 2015, the payment of the court fees, as per the receipt in the court record, was made on 15<sup>th</sup> October, 2015. Unless and until court fees is assessed and paid the documents, though received are not lawfully on record and the court cannot and should not act on the same. Courts offer public/government services which are only availed upon payment of the requisite fees as such fees is public revenue that must be collected prior to any services being offered unless a party is exempted from paying such fees. The essence of all the foregoing is that the cause herein was hence filed and accepted by court on 15<sup>th</sup> October, 2015. In fact, the court file cover precisely confirms that the cause was filed on this date against Laikipia University which as noted above was at no point the employer.
42. The court date-stamp may have been affixed on the documents on 28<sup>th</sup> September, 2012 or the stamp may have been tampered with on 15<sup>th</sup> October, 2015 to back-date the same to the afore-stated date but either way the claim was filed out of time, outside the limitation period set out in Section 90 of the *Employment Act* (the Act). Even if the court assumed for a moment that the cause was filed in court on 28<sup>th</sup> September, 2015, which is however not the case, the same is still time-barred as the alleged



dismissal or termination took place on 28<sup>th</sup> September, 2012. Without splitting hairs, three years from 28<sup>th</sup> September, 2012 must have lapsed on a date prior to 28<sup>th</sup> September, 2015.

43. On the basis of the above two grounds - improper and ambiguous pleading and statutory limitation - the claimant's cause shall fail.
44. On the second issue, the court may not wish to engage on the employment relationship prior to the contract entered into on 26<sup>th</sup> June, 2012. This is because, even if the court was to find that the claimant was permanent and pensionable no remedy or relief shall be available to the claimant due to the limitation in time explained above. Likewise, it is of no use considering the nature of the short-term contract and the consequences of non-renewal of the same as the claim is time-barred, anyway.
45. The court has examined the reliefs sought and they are all based on the alleged employment relationship prior to the short-term contract alluded to above. The claim in its entirety is clearly time-barred and incapable of being remedied.
46. For the foregoing reasons, the cause is therefore hereby dismissed.

## **VII. Orders**

47. For all the foregoing reasons, the claimant's cause is hereby dismissed with no order as to costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

.....

**DAVID NDERITU**

**JUDGE**

