



**Kenya Methodist University v Njuguna (Civil Appeal E1423 of 2024)
[2025] KEHC 13391 (KLR) (Civ) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13391 (KLR)

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

CIVIL

CIVIL APPEAL E1423 OF 2024

AC MRIMA, J

SEPTEMBER 30, 2025

BETWEEN

KENYA METHODIST UNIVERSITY APPELLANT

AND

NELLY WAMORO NJUGUNA RESPONDENT

(Being an appeal from the judgment and decree of Hon. Wangari Mbulikah (Principal Magistrate) delivered on 8th November, 2024 in Nairobi CMCC No. 9415 of 2018)

JUDGMENT

1. The Respondent herein, Nelly Wamoro Njuguna, was desirous of becoming a career Teacher in her life despite garnering a mean grade of C- [Minus] at the Kenya Certificate of Secondary Examination [K.C.S.E.] in 2008 when she sat her said examinations at Nginda Girls High School within Murang'a County. In her said quest, the Respondent approached the Appellant herein, Kenya Methodist University, an institution of higher learning in Kenya and sought for guidance in attaining her life dream of becoming a Teacher. According to the uncontroverted evidence on record, the Appellant informed the Respondent that despite the grade she had attained in the KCSE examinations, she could still pursue a Bachelor's degree course in Education on condition that she undergoes a bridging course for 3 months which course the Appellant offered at the cost of Kshs. 60,000/=.
2. Relying on the advice, the Respondent registered for the bridging course and successfully completed it. She was eventually registered for a Bachelor's course in Education by the Appellant which she diligently undertook and graduated in 2013 with a sterling Second Class Upper Division. It was the rejection of her application to be registered as a Teacher at the Teachers Service Commission on grounds that the bridging course which the Appellant had offered the Respondent was inadequate as to accordingly upgrade the Respondent's qualification for employment as a Teacher. According to the Teachers



Service Commission, the bridging course was to be for a period of 6 months instead of the 3 months which the Appellant had offered the Respondent. Resultantly, the Respondent instituted Nairobi [Milimani] Chief Magistrates Civil Suit No. 9415 of 2018 [hereinafter referred to as 'the suit'].

3. Through a Complaint dated 25th October 2018, the Respondent sought judgment for the sum of Kshs.1,088,980.00/= in special damages, alongside general damages, costs and interest at Court rates.
4. The suit was vehemently opposed. The Appellant filed a Statement of Defence dated 8th January 2019 wherein it averred that the bridging course it offered to the Appellant was duly recognized at as the time it was offered to the Respondent and as such, the Respondent's sole recourse was to instead pursue the Teachers Service Commission. The Appellant also posited that the suit was time-barred since the cause of action was based on a tort and the suit was filed more than the period of three years as provided for by the law. For those reasons, the Appellant sought for the dismissal of the suit with costs.
5. The suit was eventually heard by way of viva voce evidence where the Respondent testified and as well as the Appellant's Legal officer. The trial Court rendered its judgment on 8th November 2024 in favour of the Respondent and in the following terms: -
 - i. General damages - Kshs.500,000/=;
 - ii. Special Damages - Kshs.1,008,980/=;
 - iii. Interests on (i) and (ii) above at court rates from the time of judgment and time of filing suit respectively until payment in full; and
 - iv. Costs of the suit.
6. Aggrieved by the said judgment, the Appellant filed the instant appeal and in a Memorandum of Appeal dated 5th December 2024 it preferred the following grounds of appeal: -
 1. The Learned Trial Magistrate Court erred in law and fact by holding that the Respondent has proved her case on a balance of probability yet the Respondent did not tender in court any evidence showing that she applied to the Teachers Service Commission to be registered as a teacher.
 2. The Learned Trial Magistrate Court erred in law and fact by holding that Respondent had proved her case on a balance of probability without regard to the fact that the Respondent did not tender any evidence before the Court on the allegations as to why the Teachers Service Commission refused to register her as a teacher.
 3. The Learned Trial Magistrate Court erred in law and fact by holding that Respondent had proved her case on a balance of probability despite the fact that the Respondent did not tender any evidence before the Court on whether she has ever approached the Teachers Service Commission to be registered as a teacher.
 4. The Learned Trial Magistrate Court erred in law and fact in awarding special damages of up to Kshs.1,008,980/= despite the fact that the evidence tendered was up to Kshs.718,000/=.
 5. The Learned Trial Magistrate Court erred in law and fact in giving undue regard to the fact that the suit was a tortious claim hence time barred under the statute of limitation.
 6. The Learned Trial Magistrate Court erred in law and fact in failing to find that the court lacked jurisdiction to hear and determine this case as was raised in the defence and appellant's submissions.



7. The Learned Trial Magistrate Court judgment was unjust, against the weight of evidence and was based on misguided points of fact and wrong principle of laws and has occasioned miscarriage of justice.
 8. The Learned Trial Magistrate Court erred in law and fact in finding the entire Defence unconvincing and failing to consider the Appellant's submissions.
 9. That the Learned Magistrate erred in awarding damages for the nature of the matter in the face of the evidence adduced.
 10. The Learned Trial Magistrate misdirected herself in failing to make a finding in favour of the Appellant.
7. It was upon these grounds that the Appellant prayed that the appeal be allowed, the judgment dated 8th November 2024 be set aside and it be awarded costs of both the appeal and the suit.
 8. By the directions of this Court, the appeal was canvassed by way of written submissions. The Appellant's submissions were dated 5th March 2025 while the Respondent's submissions were dated 19th March 2025. The gist of these submissions will be ingrained in the latter part of this judgment.
 9. This being a first appeal, the Court is well aware of its role as reiterated in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123 as follows: -

...this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.
 10. This Court further appreciates the settled principle in *Mwanasokoni vs Kenya Bus Service Ltd* (1982-88)1KAR 78 and *Kiruga vs Kiruga and Another* that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the court is shown demonstrably to have acted on wrong principles in reaching the findings. (See also *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR).
 11. Having perused the record, parties' submissions and rival arguments, the following two main issues stand out for this Court's determination: -
 - i. Whether the suit was time barred; and
 - ii. Whether the claim was proved.
 12. This Court will now deal with the above issues in seriatim.

Whether the suit was time-barred:

13. The Appellant posited that the Respondent's claim was tortious and not based on contract and as such, was time barred as the *Limitation of Actions Act* imposes a three-year period for filing of tortious claims. For this reason, the Appellant submitted that the trial Court lacked jurisdiction to entertain the suit. The Appellant further posited that even if it were found that the Court had jurisdiction, still the Appellant fully discharged its contractual obligations under the contract as the Respondent was eventually conferred the Bachelor's degree upon completion of the course.



14. The Respondent on the other hand, was emphatic in her submissions that the suit was brought under the Law of contract and as such the suit was well within the six-year period as provided under Section 4(1)(a) of the Limitations of Actions Act.
15. Limitation is a jurisdictional issue and must be determined at the earliest possible opportunity. [See the Supreme Court in *Petition No. 7 of 2013 Mary Wambui Munene vs. Peter Gichuki Kingara and Six Others* [2014] eKLR]. In dealing with this issue, the trial Court found that the suit was based on the Law of contract and declined the invitation.
16. The trial Court, in relying on a decision by a superior Court, found that the relationship between the Appellant and the Respondent was contractual and as such the suit was not time-barred. This Court finds no difficulty in resolving this issue. There is no doubt that the relationship between the parties herein was purely contractual. That aside, time began running from when the Respondent's application was declined by the Teachers Service Commission. Since that was only possible after the Respondent graduated in July 2013 and the suit was filed in 2018, then irrespective of when the Respondent's application was actually declined, the 6-year period was still running. As such, the jurisdictional objection was a false start and is for rejection.

Whether the suit was proved:

17. The Appellant is one of the accredited universities in Kenya under the *Universities Act*, Cap. 210 Laws of Kenya. The preamble to the *Universities Act* has it that it is An Act of Parliament to provide for the development of university education; the establishment, accreditation and governance of universities; the establishment of the Commission for University Education, the Universities Funding Board and the Kenya University and Colleges Central Placement Service Board; the repeal of certain laws, and for connected purposes. Once a university is allowed to operate and offer its services to the public, there is a presumption that the university is legally-compliant and what it offers is within the law. It must have been on that background that the Respondent approached the Appellant for her career guidance. It was the Appellant who advised the Respondent to undertake a bridging course which it offered at a cost of Kshs. 60,000/= before she would qualify to undertake the undergraduate studies leading to a Bachelor's degree in Education. The Respondent obliged.
18. It was not until when the Respondent applied to the Teachers Service Commission for employment when she was informed that the bridging course was inadequate since it was instead to be for a period of 6 months instead of the 3 months course which the Appellant offered. Since it was the Appellant who advised the Respondent on the pathway in her career, the Respondent had a legitimate expectation that once she completed her undergraduate studies, she would be eligible for recruitment by the Teachers Service Commission. However, that was not the case as it turned out that the Appellant had misadvised the Respondent on her career path.
19. The trial Court referred to a decision by the Supreme Court on the doctrine of legitimate expectation. In a different decision, the Supreme Court in *Kenya Revenue Authority v Export Trading Company Limited* (Petition 20 of 2020) [2022] KESC 31 (KLR) (17 June 2022) (Judgment) further delineated the following guiding principles on the applicability of the doctrine: -
 - (i) there had to be an express, clear, and unambiguous promise given by a public authority;
 - (ii) the expectation itself had to be reasonable;
 - (iii) the representation had to be one that was competent and lawful for the decision-maker to make; and



- (iv) there cannot be a legitimate expectation against clear provisions of the law or *the Constitution*.
20. The Apex Court then proceeded to define the doctrine as follows: -
50. In the 4th Edition, Vol 1 (1) At page 151, paragraph 81 of the Halsbury's Laws of England, legitimate expectation is described as follows:
- ... A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by authority, including an implied representation, or from In the unique circumstances of the case, consistent past practice.
21. By applying the above principles to the unique circumstances in this case, the trial Court, rightly so, found that the doctrine was applicable and entered judgment in favour of the Respondent. This Court cannot, therefore, fault the trial Court in the manner it rendered itself on the suit. This Court will not, therefore, disturb the award on general damages.
22. As to the special damages, it is settled law that such damages should be pleaded and proved. The Respondent pleaded the sum of Kshs. 1,088,980/= in paragraph 13 of the Plaint which sum was wholly allowed. The Appellant faulted the trial Court in awarding the said sum arguing that the evidence tendered proved the sum of up to Kshs.718,000/=. I have considered the receipts which were produced as exhibits. They add up to Kshs. 718,000/=. However, the Appellant did not deny offering the bridging course to the Respondent at the sum of Kshs. 60,000/=. As such, the said amount was properly allowed. The rest of the sums were not proved and as such they were improperly allowed.
23. Having rendered as much, it is clear that the Respondent's claim was proved on a balance of probabilities. The upshot is that the Respondent was correctly awarded the general damages and is equally entitled to the sum of Kshs. 778,000/= as special damages.
24. Consequently, the following final orders do issue: -
- (a) The appeal is hereby partially allowed. The sum of Kshs. Kshs.1,088,980.00/= awarded as Special damages is hereby reviewed to Kshs. 778,000/=.
- (b) For clarity, the award of Kshs. 500,000/= as general damages made in Nairobi [Milimani] Chief Magistrates Civil Suit No. 9415 of 2018 dated 8th November 2024 is hereby upheld.
- (c) Each party to bear its costs of the appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Masore Nyang'au, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

