



**Maseno University v Otumba (Cause E050 of 2025)
[2025] KEELRC 2873 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2873 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E050 OF 2025
JK GAKERI, J
OCTOBER 23, 2025**

BETWEEN

MASENO UNIVERSITY CLAIMANT

AND

DR EDGAR OUKO OTUMBA RESPONDENT

JUDGMENT

1. The claimant instituted the instant suit vide a Memorandum of Claim dated 10th June, 2025 claiming that the respondent, who is currently serving as a County Executive Committee Member, County Government of Siaya, currently on leave of absence from the claimant University owed the claimant the sum of Kshs.335,735.00 as outstanding overpayment for part-time teaching and Kshs.559,099.40 as irregularly paid salary for December 2022 and January 2023 and costs.

Respondent's case

2. The respondent admitted that he had sought leave of absence from the claimant for a period of 3 years and the same was approved vide letter dated 15th December, 2022 which the respondent acknowledged receipt on 21st December, 2022.
3. It is the respondent's case that sometime in 2023, the claimant informed him of the erroneously paid salary for December 2022 and January 2024, as well as overpayment for part-time teaching, total Kshs.936,047.00 and he undertook to pay the sum of Kshs.334,735 at Kshs.10,000 per month but the claimant rejected the proposal without a counter proposal and clarifications sought on the amount recoverable were unresponded to. The claimant University however, recovered the amount paid as pension Kshs.134,265.96.
4. The instant suit was filed on 18th June, 2025.



Claimant's submissions

5. As to whether the claimant was entitled to the reliefs sought counsel for the claimant submitted that since the respondent was granted leave of absence effective 28th November, 2022 and would not be entitled to salary allowance and benefits but the claimant erroneously paid the salary, the same was irregularly received and retained as he had only one employer consistent with Article 77(1) of the Constitution of Kenya and the respondent admitted that the amount had not been repaid.
6. On recovery of the sum of Kshs.559,099.40, counsel submitted that the respondent had admitted liability and had offered to repay the same at Kshs.10,000.00 per month among other promises and ought to be compelled to repay the sum.
7. Reliance was placed on the sentiments of Madan JA in *Chaitram V Nazari* [1984] eKLR cited in *Boogertman Partners Architects Ltd V Two Rivers Lifestyle Centre Ltd* [2025] KEHC 10964 (KLR) on the nature of admissions by a party to urge that liability for overpayment for part time teaching had been admitted.
8. The respondent had not filed submissions on the CTS by the time the court retired to prepare this judgment.
9. During the hearing on 2nd October, 2025, it emerged that had the claimant followed its grievance resolution procedure as it should have done, this suit would not have been necessary. This is because the respondent had previously admitted and reiterated it in court that he was aware of the overpayment for part –time teaching and was willing to refund the same.
10. Admittedly, it was the claimant's mistake and CWI Millicent Madara admitted that she had no evidence of the claim form submitted by the respondent for payment of part-time teaching.
11. Similarly, the claimant refused, failed and/or neglected to respond to the respondent's letter.
12. As regards over-payment of salary, while the claimant insisted that since the respondent sought unpaid leave effective immediately and the same was granted in December, salaries for December 2022 and January 2023 were not payable, the respondent on the other hand testified that by the time leave was granted, the December payroll had been concluded and the Siaya County Government used his clearance letter to pay his salary.
13. Either by default or design, the respondent did not disclose when the Siaya County Government commenced payment of salary, which in the court's view ought to have been 15th December, 2022 when the respondent's leave of absence was approved.
14. As regards the salary for January 2023, although the respondent attempted to justify the payment, that he was clearing with the teaching duties, it is trite that he was not entitled to it by dint of Section 17 of the Employment Act which provides:
 1. Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly, in the currency of Kenya—
 - a. in cash;
 - b. into an account at a bank, or building society, designated by the employee;
 - c. by cheque, postal order or money order in favour of the employee; or



- d. in the absence of an employee, to a person other than the employee, if the person is duly authorised by the employee in writing to receive the wages on the employee's behalf.
15. This provision lays it bare that salary or wages must be earned in order to become payable.
 16. Bearing in mind that the respondent sought leave of absence effective immediately and could not proceed before leave was granted by the employer, the respondent's leave of absence could not have commenced before December 15th 2025 for the simple reason that he could not legally render services to the County Government of Siaya prior to the grant of leave.
 17. At any rate the claimant did not adduce evidence to demonstrate that the respondent was free to take up the position offered by the County Government of Siaya pending approval of his application for leave of absence.
 18. Strangely, however, the respondent accepted the offer before his application for leave of absence had been approved. It is however, unclear to the court when he reported on duty.
 19. Instructively, the claimant had discretion to approve or reject the respondent's application for leave of absence citing exigencies of duty or other reasons. It was and remains the respondent's employer.
 20. Clause 18.0 of the Maseno University Terms and Conditions of Service for Teaching Staff (Grade 11 – 15), the claimant had discretion to grant leave of absence to a member of the teaching staff for a period of upto 5 years renewable once.
 21. It is trite that leave of absence is granted by the head of the institution or organization and in this case, the Vice-Chancellor of the Claimant University and any unapproved leave would have been ineffectual.
 22. In the court's considered view, the only portion of the respondent's salary recoverable for the month of December 2022 is the net salary for 16 days and the net salary for the month of January 2023.
 23. Intriguingly, the Deputy Vice-Chancellor's letter dated 15th December, 2022 which was copied to the Directorate of Human Resource and the payroll section had not been acted on by the time claimant's payroll for January, 2023 was finalised.
 25. Be that as it may, the respondent cannot escape blame for having utilized a salary he had not worked for and having served the County Government of Siaya for the entire month of January 2023 and ought to have been paid for services rendered.
 26. On appropriate reliefs the court proceeds as follows:
 - i. Declaration
Having found as above, it is clear that retention of the December 2022 salary 16 days and the entire salary for January 2023 by the claimant was illegal and unlawful and the declaration sought is merited.
 - ii. Payments
Having admitted that the salary was paid erroneously and having further admitted that he was ready and willing to pay the amount overpaid for part-time teaching, both the salary and overpayment are recoverable by the claimant.
 27. The respondent's admission met the criteria in *Choitram V Nazari* (supra).
 28. Consequently, the claimant's suit against the respondent is partially successful and the following orders commend themselves.



- a. Declaration that retention of part of the December 2022 salary and the net salary for January 2023 was illegal and unlawful.
 - b. Parties shall agree on a suitable repayment schedule for the respondent to repay the net salary for 16 days of December 2023 and the net salary for January 2023 as well as Kshs.335,735.00 being overpayment for part-time teaching, failing which the respondent shall pay the sum of Kshs.20,000 per month until the amount owed is fully paid.
29. Having found that neither party was free from blame, it is only fair that each party bears its own costs.
30. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 23RD DAY OF OCTOBER, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

