

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT  
ELDORET**

**ELRC CAUSE NO. E029 OF 2024**

**HELLEN KWAMBOKA OMWOYO.....**

**.....CLAIMANT**

**VERSUS**

**UNIVERSITY OF EASTERN AFRICA BARATON ....**

**RESPONDENT**

**JUDGMENT**

1. Vide her Statement of Claim dated 14<sup>th</sup> June 2024, the Claimant alleges that the Respondent maliciously, illegally, and unlawfully downgraded her from the position of Lecturer to that of Tutorial Fellow I.
2. The Claimant avers that she was employed by the Respondent sometime in 2002 as an Assistant Lecturer in its Department of Languages and Literature.
3. It is the Claimant's case that during her employment, she served the Respondent diligently and rose through the ranks to become a Lecturer in 2006, with her remuneration being

set at 97% of the wage factor. Further, that on 20<sup>th</sup> October 2006, she was confirmed as the Chair of the Department of Languages and Literature vide a correspondence dated 1<sup>st</sup> November 2006.

4. The Claimant contends that pursuant to Section 4.9.1 of the Respondent's Employment Handbook 2018 Edition and the ECD Working Policy Z 30 05 No. 2, she was due for retirement in December 2023.
5. The Claimant asserted that when she was nearing her retirement, she visited the Respondent's Human Resource Manager's office to collect a copy of the Retirement Application Form and her service record. That it was then that she discovered that her service record reflected that she had been wrongfully and maliciously downgraded from the rank of Lecturer to that of Tutorial Fellow I with effect from 1<sup>st</sup> September 2018, and that her remuneration had been reduced from 97% to 80% of the wage factor.
6. It is the Claimant's assertion that in a bid to correct the said anomaly, she raised the issue with the Human Resource Manager through a correspondence dated 3<sup>rd</sup> April 2023,

protesting the downgrade from Lecturer to Tutorial Fellow I and pointing out that the same had never been communicated to her. She averred that she demanded restoration of her academic rank and correction of her service record to reflect that she indeed retired as a Lecturer so as to avoid potential financial loss arising from the downgrade.

7. The Claimant stated that during a meeting held on 19<sup>th</sup> June 2023, the Respondent's Vice Chancellor explained that the *Tutorial Fellow I* designation was a financial and not an academic rank and that it was introduced under new Commission for University Education (CUE) requirements linking salary levels to academic qualifications. In addition, it is asserted that the Vice Chancellor stated that her academic rank remained that of Lecturer in Linguistics, and that under the new structure, Lecturers with Master's degrees could not be placed in the same salary category as those holding PhDs, irrespective of teaching or research experience.
8. The Claimant maintained that this meeting was the first time she had seen the referenced document explaining the new

grading structure, despite the Vice Chancellor's forwarding note indicating that all staff were expected to read it. She further stated that the Respondent's Human Resource Manager presented a document titled *Scheme of Service and Career Progression Guidelines*, which had apparently been approved by the University Council. She disagreed with the justification advanced for her downgrade and the corresponding reduction in remuneration.

9. The Claimant averred that, upon borrowing and reviewing the said document, she discovered that the rank of *Tutorial Fellow I* was in fact a newly created academic rank and not a financial one. She contended that the CUE's previously recognized rank of *Tutorial Fellow* had been abolished and replaced by four new ranks, among them *Tutorial Fellow I* and *Tutorial Fellow II*, resulting in the Respondent having eight academic ranks as opposed to the six officially recognized by the CUE. She asserted that academic ranks are standardized nationally and regionally and are earned through criteria prescribed by the CUE, not through internal financial classifications.

10. The Claimant further testified that on 24<sup>th</sup> July 2023, she lodged an appeal to the Respondent's University Council, which was deliberated upon in November 2023 but to date no decision has been communicated to her. She further averred that at the end of January 2024, she discovered that she had been removed from the Respondent's payroll.
11. The Claimant attributed her removal to the Respondent's Council's indecisiveness, which, in her view, allowed the Vice Chancellor to make unilateral, punitive, and pre-emptive decisions on a matter still under consideration, contrary to the principles of fair administrative procedure. She described the Respondent's conduct as insincere, inhumane, and inconsiderate, causing her emotional and mental distress.
12. The Claimant maintained that as a result of the alleged illegal and malicious downgrade, she suffered financial loss amounting to Kshs. 822,120 in basic salary, with the wage factor set at Kshs. 78,000, in addition to loss of earnings for the period she served under the downgraded rank.
13. The Claimant therefore sought the following orders against the Respondent: -

- i. A declaration that the Respondent's action of illegally and unlawfully downgrading the Claimant from the rank of a lecturer to that of a Tutorial Fellow I was illegal, null and void ab initio.
- ii. A declaration that the Claimant be reinstated to the rank of lecturer.
- iii. A declaration that the Claimant's retirement benefits be computed using the 97 % wage factor.
- iv. A declaration that the Claimant is entitled to and ought to be paid the basic Salary allowance underpayment following computation on the reduction of the Claimants percentage remuneration from 97% to 80%% as from 1<sup>st</sup> September 2018 - December 2023.

Year	Underpayment	Months	Amount
2018	17% of 65,000	4	44,200
2019	17% of 65,000	8	88,400
2019	17% of 78,000	4	53,040
2020	17% of 78,000	12	159,120
2021	17% of 78,000	12	159,120

2022	17% of 78,000	12	159,120
2023	17% of 78,000	12	159,120
TOTAL			822,120

- v. An order directing that the Claimant is entitled to and ought to be paid the research allowance underpayment based on academic rank beginning September 2022 as follows:

Year	Underpayment	Months	Amount
2022	20,000	4	80,000
2023	20,000	12	240,000
TOTAL			320,000

- vi. A declaration that the Claimant is entitled to receive her salary and allowances of full time UEAB lecturer from January 2024 to the time she is to officially retire by the ECD retirement committee based on 97% remuneration and wage factor of Kshs 78,000

- vii. General damages for the emotional torture that the Claimant has had to endure during the various stages of the Claimant's case before the Respondent's stakeholders
  - viii. Costs and interest of the suit from the date of filing
14. In its defence, the Respondent filed a Reply to the Statement of Claim and Counterclaim dated 22<sup>nd</sup> August 2024. It averred that the Claimant was due for retirement on 15<sup>th</sup> December 2023 upon attaining the mandatory retirement age.
15. The Respondent contended that the grading system which led to the Claimant being categorized as Tutorial Fellow I was based on the Commission for University Education's *Harmonised Criteria and Guidelines for Appointment and Promotion of Academic Staff in Universities in Kenya*. According to the Respondent, the said policy required that only individuals holding a PhD could become lecturers at university level, while those without the qualification were to serve as Tutorial Fellows until they attained the requisite

qualification. The Respondent therefore denied that the reclassification of the Claimant was illegal or malicious.

16. It is the Respondent's contention that the CUE policy was subsequently declared null and void by the courts as a result of which, the Respondent resolved to restore the Claimant's academic rank to that of Lecturer.
17. The Respondent affirmed its readiness to process the Claimant's retirement on that basis and undertook that her service record shall reflect the academic rank of Lecturer.
18. In addition, the Respondent asserted that prior to implementing the new salary structure in 2018, it complied with Section 10(5) of the Employment Act by consulting staff through meetings held between 17<sup>th</sup> and 21<sup>st</sup> September 2018 and the Claimant was thereafter notified of the implementation through a letter dated 16<sup>th</sup> November 2018.
19. The Respondent maintains that under the new structure, the Claimant's remuneration, calculated at 80% of the wage factor, was in fact higher than what she would have earned under the previous 97% wage factor as the new salary was based on a revised salary scale which gave the Claimant a

salary that was higher by Kshs. 3,800 per month from Kshs. 58,200 to Kshs. 62,000. It was therefore the contention of the Respondent that the Claimant did not receive a lower salary or an underpayment due to the alleged downgrading.

20. With regard to the Claimant's retirement, the Respondent states that the Claimant has failed to submit the requisite Retirement Application Form, thereby stalling the processing of her retirement benefits. It is averred that that the Claimant has been receiving retirement advances since January 2024 until she retired.
21. Regarding the claim for research allowance, the Respondent asserts that the allowance is based on academic qualification and not rank and the sum of Kshs. 45,000 is payable only to PhD holders, whereas the Claimant, being a Master's degree holder, is entitled to Kshs. 25,000, which she has been paid in full.
22. The Respondent denied liability for any alleged underpayment of salary and research allowance amounting to Kshs. 1,142,120 as sought by the Claimant.

23. In its Counterclaim, the Respondent averred that the Claimant received a total of Kshs. 440,400 under a bursary loan agreement dated 28<sup>th</sup> September 2015 to pursue a PhD in Linguistics at Moi University. It was further averred that in May 2019, the Claimant received an additional sum of Kshs. 297,482.90 as fully paid study leave to facilitate data collection for her dissertation, bringing the total amount advanced to Kshs. 737,882.90.
24. The Respondent asserted that under the bursary loan agreement dated 28<sup>th</sup> September 2015, the Claimant was required to complete her PhD studies within four years and to amortize the bursary upon successful completion. The Respondent maintained that it was an express condition of the agreement that, in the event of an unjustified failure to complete the studies within the stipulated period, the Claimant would be liable to refund the entire amount advanced.
25. The Respondent contended that the Claimant had failed to complete her PhD studies and was now due for retirement. Consequently, the Respondent prayed that the Claimant be

ordered to refund the total sum of Kshs. 737,882.90 advanced to her under the bursary loan arrangement.

26. The Respondent also prayed for costs of the Counterclaim together with interest on the said sum until payment in full.
27. In a rejoinder, the Claimant filed a Response to the Reply to the Statement of Claim and the Memorandum of Counterclaim dated 3<sup>rd</sup> October 2024. She averred that the restoration of her academic rank to Lecturer, together with the corresponding adjustments to her service record, should reflect remuneration based on the salary scale applicable to the position of Lecturer under the previous structure, which provided for a 97% wage factor.
28. With regard to the Respondent's Counterclaim, the Claimant maintained that at the time she received the first bursary payment in September 2015, she was approximately 57 years old, and even if she had completed her PhD studies within four years, she would have been about 61 years of age at the time of graduation.

29. She further contended that she was a part-time PhD student, and under the UEAB Faculty and Staff Handbook and Moi University Postgraduate Policies, a part-time PhD student is expected to take a minimum of seven years to complete the programme.
30. It is therefore the Claimant's position that the Respondent's assertion that she failed to complete her PhD studies without justification is unfounded and malicious.
31. Accordingly, the Court was urged to dismiss the Respondent's Reply to the Statement of Claim and the Memorandum of Counterclaim with costs.

### **The Evidence**

32. The Claimant testified on 29<sup>th</sup> October 2024 as CW1. She adopted her recorded witness statement and relied on the documents filed in support of her case as her evidence in chief.
33. It was the Claimant's testimony that she was maliciously, illegally, and unlawfully downgraded from the position of Lecturer to that of Tutorial Fellow I. She therefore prayed

that the Court grant the reliefs sought in her Statement of Claim.

34. Upon cross-examination, the Claimant stated that she had been promoted to the position of Lecturer in 2006 by the University Council and that the downgrade effected in 2018 was malicious, as it disregarded her prior promotion.
35. She testified that she discovered the downgrade in 2023 while processing her retirement and noted that her salary had been affected as she had not been paid as a Lecturer from September 2018 to the date of her expected retirement. She explained that her salary as a Lecturer before the downgrade was Kshs. 58,000, representing 97% of the Kshs. 60,000 wage factor and after the downgrade, her wage factor was reduced to 80%, and she earned Kshs. 62,000.
36. The Claimant confirmed that although her gross pay had increased by Kshs. 10,000, the percentage adjustment reflected a downgrade to the financial grade of Tutorial Fellow I rather than a Lecturer. She further testified that the

Kshs. 10,000 increment was unilaterally implemented by the Respondent as she did not request for the same.

37. The Claimant stated that she was aware of the Respondent's Guidelines, including the recommendation that Lecturers in universities should possess a PhD. She however maintained that she was unaware that those without a PhD would be downgraded to the rank of Tutorial Fellow. She testified that the court subsequently ruled against lecturers' downgrades.
38. The Claimant in her testimony confirmed that she had entered into a loan agreement with the Respondent, under which she was to serve the Respondent upon completion of her PhD studies. She admitted that she had not completed her PhD. She stated that there was no agreement requiring her to repay the bursary in cash.
39. Upon re-examination, the Claimant reiterated that following her downgrade to Tutorial Fellow I, she was given an extra payment of Kshs. 10,000 without any explanation. She further stated that in a decision relating to CUE directives, the court ordered that the *status quo* be maintained,

meaning that those already promoted to the rank of Lecturer were to remain in that position.

40. The Respondent called Jackson Ong'eta, its Deputy Vice Chancellor in charge of Finance and Administration, who testified as RW1. RW1 adopted his witness statement recorded on 20<sup>th</sup> August 2024 as his evidence in chief and relied on the documents filed by the Respondent in support of its case.
41. During cross-examination, RW1 stated that he was employed by the Respondent in 2012 and that at the time of his employment, the Claimant was a lecturer while he was an Assistant Lecturer. RW1 stated that he obtained his PhD in 2018 and was promoted to Lecturer in 2019, and subsequently to Senior Lecturer in 2022, a position he holds to date. RW1 testified that in 2018, several lecturers were downgraded to Tutorial Fellow, and that the downgrading affected several staff members.
42. RW1 maintained that the downgrading of the lecturers was done after an inspection by the Commission for University Education (CUE) in 2016 where the Respondent was advised

to implement measures to motivate staff. It was his testimony that the University introduced a salary structure aimed at motivating lecturers. He confirmed that there was no provision authorizing downgrading of staff and that the exercise was based on the University's internal harmonization criteria.

43. RW1 further testified that before the downgrading exercise, a wage factor was applied uniformly to all lecturers and the Claimant was earning a wage factor of 95% of Kshs. 65,000. He stated that at that time, even a lecturer with a PhD would still earn the same wage factor.
44. The Respondent's witness contended that the wage factor changed in 2019 for both lecturers and tutorial fellows. He added that the changes affected all lecturers and that the downgrading was necessitated by the Respondent's financial challenges.
45. RW1 stated that after the Claimant received her service record, she declined to sign the retirement forms and lodged a complaint which was first handled administratively. That thereafter she filed an appeal to the University Council. He

added that a committee of the Council was constituted, before which the Claimant appeared, and the Council ultimately rendered its decision.

46. It was the evidence of RW1 that the Claimant has been receiving Kshs. 19,000 monthly since her retirement in 2023, being the amount which she is entitled to. He denied the allegation made by the Claimant that she was to continue working until payment of her terminal dues. RW1 stated that had the Claimant completed her PhD, she would have continued working for the Respondent up to the age of 70 years.
47. Upon re-examination, RW1 maintained that although the Claimant's basic salary was reduced from Kshs. 58,200 to Kshs. 52,000, the Respondent introduced a mitigating allowance of Kshs. 10,000, bringing her total monthly pay to Kshs. 62,000. He stated that, as a result, the Claimant's overall remuneration was not adversely affected by the alleged downgrading. RW1 further testified that the Claimant continues to occupy University housing and is currently receiving the equivalent of her pension entitlement.

48. At the close of the Respondent's case, parties were directed to file written submissions. The Claimant filed two sets of submissions. The submissions dated 21<sup>st</sup> January 2025 and further submissions dated 14<sup>th</sup> February 2025. The Respondent's submissions are dated 13<sup>th</sup> February 2025.
49. By and large, the submissions reiterated the positions taken by the respective parties, and I need not repeat them.

### **DETERMINATION**

50. Upon considering the pleadings herein, the evidence of the respective parties as well as the submissions, I find that the issues that fall for this court's determination are: -
- i. Whether the downgrading of the Claimant from the rank of a Lecturer to Tutorial Fellow was lawful and justified*
  - ii. Whether the Claimant's retirement was procedural and in accordance with the Respondent's policies and the applicable law*
  - iii. Whether the Claimant is entitled to the reliefs sought in the Statement of Claim*

*iv. Whether the Respondent is entitled to the reliefs sought in the counterclaim*

*v. What orders should issue?*

*Whether the downgrading of the Claimant from Lecturer to Tutorial Fellow was lawful and justified*

51. The Claimant contended in her pleadings as well as in her oral testimony that the Respondent maliciously, illegally, and unlawfully downgraded her from the position of Lecturer to Tutorial Fellow in 2018.

52. On the other hand, the Respondent averred that the downgrading was part of a harmonization exercise undertaken following recommendations by the Commission for University Education (CUE) after an evaluation visit in 2016.

53. The Respondent maintained that the review was aimed at aligning salary structures and academic designations in accordance with CUE standards and to motivate staff. RW1 testified that although the CUE recommendations did not expressly direct downgrading, the University adopted internal criteria to implement the changes.

54. RW1 in his testimony stated that the downgrading exercise as carried out by the Respondent affected several lecturers, including the Claimant. He also stated that there was no specific directive from the Commission for University Education (CUE) requiring or authorizing such downgrading. RW1 in his testimony stated that the exercise was based on an own harmonized criterion.
55. In the Claimant's documents at page 10 is the Commission for University Education Harmonized Criteria and Guidelines for Appointment and Promotion of Academic Staff in Universities in Kenya . At page 17 which is page paragraph 3.0 of the guidelines is the minimum criteria for appointment or promotion of university academic staff. For a lecturer/Research Fellow the minimum qualifications are a PhD or equivalent degree qualification in the relevant field from an accredited and recognized university; and be registered or registerable with the relevant professional body (where applicable).

Or

A Masters degree in the relevant field from an accredited and recognized university (in special cases) with at least three (3) years teaching experience at university level or in research or in industry; and

A minimum of 24 publication points, of which at least sixteen (16) should be form referred journal papers; and,

Registered with the relevant professional body.

56. From the foregoing, the Court finds that although there was downgrading of the Claimant in terms of rank from Lecturer to Tutorial Fellow, her salary was not reduced as the Respondent increased the base salary so that her take home salary was higher after the downgrading in rank. Further, the down grading was as a result of recommendations by Commission for University Education that all lecturers should be holders of a PhD and any lecturer without PhD should be designated as a Tutorial Fellow. The downgrading of the Claimant from the rank of a Lecturer to Tutorial Fellow 1 was therefore not irregular or unjustified.
57. It is further evident that the Respondent informed the Claimant of the change by letter dated 16<sup>th</sup> November, 2018,

before she started earning the new salary. She did not make any complaints about the changes until the time she was clearing for retirement in 2023. Her belated complaint can only mean that in actual fact there was no disadvantage or adverse effect that she suffered.

*Whether the Claimant's retirement was procedural and in accordance with the Respondent's policies and the applicable law*

58. The Claimant has asserted that her retirement was irregular as the Respondent failed to follow due process in retiring her. According to the Claimant, she was to continue working for the Respondent until payment of her terminal dues.
59. On its part, the Respondent asserted that the Claimant attained the mandatory retirement age and was therefore retired in accordance with the University's Human Resource Policies and Procedures Manual. RW1 testified that when an employee has one year to retirement, the employee is required to fill the retirement documentation to ensure that the records are up to date. He testified that the Claimant

refused to sign the said forms after receiving her service record and instead lodged a complaint which was handled administratively before she appealed to the University Council.

60. From the evidence adduced, it is evident that the Claimant has since retired upon attaining the mandatory retirement age. The Respondent's witness confirmed that the Claimant has been receiving a monthly payment of Kshs. 19,000, being the amount due to her as pension.
61. The Court also takes cognizance of the fact that the Claimant's appeal to the University Council was heard, and a decision rendered. There is no evidence before the Court to suggest that the process leading to that decision was procedurally unfair or tainted by malice.
62. In the circumstances, the Court is persuaded that the Claimant's retirement was undertaken in accordance with the Respondent's policy and the applicable retirement procedures. The Court therefore finds that the retirement was lawful and procedural.

*Whether the Claimant is entitled to the reliefs sought.*

63. In her Statement of Claim, the Claimant prayed for the following reliefs which I address as hereunder in separate heads.

*i. A declaration that the Respondent's action of illegally and unlawfully downgrading the Claimant from the rank of a lecturer to that of a Tutorial Fellow was illegal, null and void ab initio.*

Having found that the downgrading exercise was not unlawful, the Claimant is not entitled to the prayer.

*ii. A declaration that the Claimant be reinstated to the rank of lecturer.*

This prayer is declined as the employment relationship between the Claimant and the Respondent has already come to an end through retirement.

*iii. A declaration that the Claimant's retirement benefits be computed using the 97 % wage factor.*

The Claimant is not entitled to have her benefits calculated using the 97% wage factor that applied to

her as a Lecturer before the downgrade as she was in fact placed on a higher salary meaning that she qualified for a higher pension.

- iv. A declaration that the Claimant is entitled to and ought to be paid the basic Salary allowance underpayment following computation on the reduction of the Claimant's percentage remuneration from 97% to 80% as from 1<sup>st</sup> September 2018 - December 2023.*

It is not disputed that the Claimant's wage factor was reduced from 97% to 80% following the downgrade from the rank of Lecturer to Tutorial fellow 1. However, from the evidence on record the Claimant's actual salary was increased. Consequently, there was no real financial loss in her basic salary allowance and as such, this prayer is declined.

- v. An order directing that the Claimant is entitled to and ought to be paid the research allowance underpayment based on academic rank beginning September 2022*

The Claimant contended that she is entitled to the allowance payable to Lecturers based on her academic rank. The Respondent, however, maintained that the research allowance is pegged on academic qualification rather than rank, and that only PhD holders are entitled to Kshs. 45,000, while the Claimant, being a Master's degree holder, was entitled to Kshs. 25,000, which she had been duly paid. The Claimant did not produce any evidence to demonstrate that she was entitled to a higher research allowance, or that she was not paid Kshs. 25,000 that she was entitled to as a Masters holder. In the absence of such proof, this prayer is declined.

- vi. *A declaration that the Claimant is entitled to receive her salary and allowances of full time UEAB lecture from January 2024 to the time she is to officially retired by the ECD retirement committee based on 97% remuneration and wage factor of Kshs 78,000*

The evidence on record is that the Claimant has been receiving her pension entitlements and a monthly

payment of Kshs. 19,000. There is no evidence to suggest that she was entitled to receiving additional salary beyond what is already being paid. This prayer is declined

*vii. General damages for the emotional torture that the Claimant has had to endure during the various stages of the Claimant's case before the Respondent's stakeholders*

The Claimant did not adduce sufficient evidence to entitle her to damages under this head. As already stated above, although her grade was altered, the Claimant's salary was evidently higher. In the circumstances, the Court finds no basis for an award of general damages on account of loss of income.

*Whether the Respondent is entitled to the reliefs sought in the counterclaim*

64. The Respondent, in its Counterclaim, prayed for refund of Kshs. 737,882.90, which it alleged was granted to the Claimant to enable her pursue PhD studies in Linguistics at

Moi University, for which she was bonded to serve the University for seven (7) years after completion of her studies as amortization of the bursary issued. According to the Respondent, the Claimant never completed her PhD studies as agreed and is therefore obligated to refund the said amount.

65. In response, the Claimant explained that the delay in completing her studies was occasioned by the fact that she was a full-time lecturer at the Respondent's institution and a part-time student at Moi University. She maintained that under both the Respondent's Faculty and Staff Handbook and Moi University's postgraduate policy, a part-time PhD student is ordinarily expected to take a minimum of seven (7) years to complete the program.
66. The Claimant further asserted that there was no agreement requiring her to refund the bursary in cash and that the Respondent was fully aware of her age and employment status at the time the bursary was advanced. She contended that the Respondent's demand for repayment was therefore unfair and unreasonable.

67. In the Bursary/Loan Agreement dated 28<sup>th</sup> September 2015 produced by the Respondent as document 12 in its list and bundle of documents, the Claimant was required to serve the Respondent for 7 years after completion of her PhD. She was only required to repay the bursary if she terminated the studies or for unjust reasons did not complete the studies; failed to serve for 7 years after completion of the studies, resigned or her services were terminated for just cause. The Claimant did not leave service under any of these circumstances as the termination of her employment was due to attaining retirement age.
68. It is the finding of this Court that the Respondent has not proved its Counterclaim and the Counterclaim therefore fails.
69. The upshot is that both the claim and counterclaim are dismissed.
70. Each party shall bear its own costs of the suit.
71. Orders accordingly.

**DATED, DELIVERED AND SIGNED  
THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**M. ONYANGO**  
**JUDGE**