

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT KISUMU
CAUSE NO. 373 OF 2017

(Before Hon. Justice Dr. Jacob Gakeri)

MOSES

OLOO

MISEH.....CLAIMANT

VERSUS

**MIGORI COUNTY
BOARD....RESPONDENT**

ASSEMBLY SERVICE

JUDGMENT

The claimant commenced this suit on 22nd August 2017 vide a Memorandum of Claim dated on even date claiming unpaid accrued dues and prayed for:

- 1. A mandatory injunction to compel the respondent to pay all his accrued allowances as claimed, Kshs.2,155,479.00*
- 2. Costs of this claim.*

The claimant's case is that Wakiine the Clerk of the County Assembly had instructed the Sergeant-At-Arms at the Migori County Assembly to allow the claimant to sign the attendance register whenever he came in as he was ministering to the County Assembly as a Pastor/Chaplain

effective February 2014 and was being paid a salary at Kshs.5,000 per day for 1 year and 8 months.

He averred that he was later engaged as an Administrative Assistant at a monthly salary and worked on Saturday and Sundays but was not paid while others were paid.

The claimant admitted that he used to receive his salary through Family Bank and had a payslip but did not file a copy.

The claimant further confirmed that his claim was grounded on the payments he was entitled to prior to his employment as an Administrative Assistant in 2016, as promised by the then Clerk of the County Assembly but could not recall the number of days he was supposed to be paid for.

On re-examination, the claimant further stated that he was claiming unpaid allowances from the Migori County Assembly and his claim was not based in Salaries and Remuneration Commission Circulars (SRC).

Finally, the claimant testified that he attended a meeting for chaplains in Uganda having requested to attend and was allowed but was not paid and could not recall the amount he was entitled to.

Respondent's case

The respondent admitted that it engaged the claimant as a chaplain to offer prayers on Tuesday, Wednesday and Thursday to the County Assembly and he did so and denied owing him the sum of Kshs.2,155,479.00.

The respondent's case was that the claimant was only entitled to the allowance as per the letter of appointment and was paid monthly.

Mr. Collins Bala, RWI testified that the claimant was engaged as a Chaplain at Kshs.5,000 per session, 3 times a week and on Gazetted days and was paid through the payroll.

He admitted that the claimant lodged an appeal on allowances.

That the claimant ceased to be a Chaplain on 18th May 2016 when he was employed as an Administrative Assistant and all his dues had been paid. On re-examination RWI testified that the County Assembly of Migori did not owe the claimant anything and his claim lacked particulars and breakdown.

By 20th January 2026, none of the parties had filed submissions.

Analysis and determination

It is common ground that by an advertisement in the Standard Newspaper dated 23rd February 2014, the County Assembly Service Board advertised the position of Chaplain to deliver sermon and prayers to the Assembly and its Committees during plenary and other times as decided by the County Assembly Service Board and the claimant's application dated 26th February 2014 was accepted vide appointment letter dated 23rd April 2014, effective 1st May 2014 at Kshs.5,000 per plenary sitting or whenever called to offer services, for a period of 12 months renewable subject to satisfactory performance.

Both parties were in agreement that the claimant rendered services as a Chaplain until he was appointed

as an Administrative Assistant effective 18th May 2016 at Kshs.6,910.00 per month and his duties were communicated vide letter date 25th August 2016.

By letter dated 6th April 2016 the claimant appealed against a letter dated 24th March 2016 which reminded the claimant of his terms of engagement of the allowance of Kshs.5,000.00 per sitting.

He wanted engagement on permanent terms as it was his only job non-payment of tax, amount of allowance owed, and money allocated to him in the supplementary budget.

The claimant had no evidence to authenticate the claims, not even a copy of the letter he was responding to.

On the Uganda Chaplaincy Seminar 19th - 27th June 2016, the host sought permission and sponsorship of the claimant vide letter dated 13th June 2016 and the claimant travelled on 17th June 2016 and incurred expenses while in Kenya by use of taxi services. The receipts however lacked authentication.

Regrettably, the claimant did not avail evidence of having sought permission to travel to Uganda or having been

authorised to travel to Uganda or sponsored by the Migori County Assembly or anyone else.

It is trite that government authority and/or sponsorship must be in writing and the allowances payable are fixed by the SRC.

It is discernible that the County Assembly had not committed or agreed to sponsor the claimant for the seminar.

Moreover, the letter dated 13th June 2016 accorded the Assembly 3 days to make the decision to sponsor the claimant and avail facilitation, which was not feasible.

Clearly, the claimant sponsored himself for the seminar and the respondent did not owe him anything unless promised in writing, which evidence he did not avail.

Strangely, the claimant was suing the respondent for the sum of Kshs.2,155,479.00 without any particulars as to how the sum was arrived at and when.

On cross-examination, he confirmed in court that he could not remember how much was due under the Uganda seminar, an issue adverted to earlier.

He confirmed that the County Assembly sat three times a week.

Finally, the claimant could not remember how many days were unpaid for.

On his part RWI confirmed that the County Assembly did not owe the claimant any monies.

As to whether the claimant was an employee of the respondent, Section 2 of the Employment Act defines an employee to mean

“a person employed for wages or a salary and include an apprentice and indentured learner”.

The County Assembly of Migori appointed the claimant as a Chaplain on contract effective 1st May 2014 at Kshs.5,000 per plenary sitting and whenever else he was called to render services to the assembly and had no other benefits or entitlements.

His engagement was that he only rendered services when the County Assembly was in session and was free to render services elsewhere whenever the County Assembly and its committees were not sitting and thus his engagement resembled that of a casual employee. He appealed against his terms of engagement and was employed as an Administrative Assistant for a period of 3 years but left before the duration lapsed.

Whether the claimant was entitled to the sum of Kshs.2,155,479.00

As adverted to elsewhere in this judgment, although the claimant earned Kshs.5,000.00 per session and used to sign whenever he attended as directed by the Clerk of the County Assembly of Migori effective 21st January, 2015, he neither availed the record of attendance, nor a notice for the respondent to produce the same.

Granted that the claimant was suing for the amount allegedly owed prior to 18th May 2016 when he became a full-time employee, the amount of allowances outstanding could only be ascertained by the attendance register and evidence of the amount paid.

Unfortunately, the claimant had no shred of evidence as to how much was owed when or how much had been paid and the respondent maintained that it had paid the claimant for all the sessions he had attended.

It thus, behooved the claimant to demonstrate that the respondent had not paid for all sessions.

The claimant was duty bound to provide details or particulars of the days he attended and was not paid for the burden to shift to the respondent to prove payment.

It is trite law that he who alleges bears the burden of proof as ordained by the provisions of Section 107, 108 and 109 of the Evidence Act.

Section 107 provides that;

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.**
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**

108: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

See **Gichuru V Package Insurance Brokers Ltd** [2021] KESC 12 (KLR) and **Yunes Mukolwe V Hamisi Jason Namulondo & 3 others** [2016] KEHC 6346 (KLR).

Significantly, the claimant was claiming special damages which must be pleaded and proved as held in **Hahn V Singh** [1985] KLR 716, **Nimo Ali V Sagoo Radiation Ltd** [2013] KECA 163 (kLR), **Securicor (K) Ltd v Esther Oliech** [1996] KECA 89 (KLR), **Easy Coach Ltd & another V Elizabeth Musodi & Justice Okwero** (suing as Legal Representative of the Estate of **Ignatius Oketch Ombara** [2013] KECA 865 (KLR) and **Premier Diary Ltd V Amarjit Singh Sagoo and another** [2013] KECA 95 (KLR).

Having failed to provide relevant details and particulars to show how the global sum of Kshs.2,155,479.00 was arrived at and the different components of the claim, irresistible finding is that the claimant failed to discharge

the burden of proof for the court to find the claim was merited.

The upshot of the foregoing is that the claimant's suit is for dismissal and it is accordingly dismissed.

Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 21ST DAY OF JANUARY 2026.**

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