

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT KISUMU

CAUSE NO. E043 OF 2025

(Before Hon. Justice Dr. Jacob Gakeri)

KHADIJA

NALINYA.....CLAIMANT

VERSUS

**JARAMOGI OGINGA ODINGA UNIVERSITY OF SCIENCE &
TECHNOLOGY..**

.....RESPONDENT

JUDGMENT

The claimant commenced the instant suit vide a Memorandum of Claim dated 8th June 2025 filed on 10th June 2025 claiming unpaid work days.

The claimant's case was that she was employed by the respondent as a Program Officer on 25th November 2024 at Kshs.212,508 under the UBJ Program and the contract of employment was terminated on 28th February 2025 but alleged to have been allocated work in March, April and May 2025 but was not paid.

The claimant, however, admitted that she was issued with and signed a new contract for 14 days effective 1st

April 2025 but according to the claimant she worked for 90 days.

The claimant prayed for:

- (i) A declaration that the respondent's failure to pay acting allowance was unlawful.*
- (ii) Kshs.762,064, being 3 month's salary.*
- (iii) Certificate of service.*
- (iv) Interest on (ii) from March 2025 till payment in full.*
- (v) Costs of the suit.*
- (vi) Gratuity $31\% \times 133,914 \times 3 = 124,540$*
- (vii) Any other or further relief that the court may deem fit to grant.*

Respondent's case

The respondent's case was that the claimant's employment contract was terminated on 28th February 2025 in response to a stop-work Order issued on 26th February 2025 by the USAID and denied having allocated any work to the claimant thereafter and only engaged the claimant for 14 days after termination of the contract. It denied that the claimant worked for 90 days during the close out period. The respondent prayed for dismissal of suit with costs.

On cross-examination, the claimant admitted that although she claimed to have worked from 1st March to 30th May, her written witness statement did not state so. The witness admitted having received and accepted the 14 days fixed term contract and had written a letter on payment of *per diem* for 14 days and did not write to the respondent on the two weeks fixed term contract and had no employment contract on 1st March 2025.

The witness further admitted that she was expected to prepare a report and submit the same to the respondent but did not until 19th June 2025 via email of even date.

Although the witness indicated that she had submitted a draft report on 24th May 2025, she admitted that she had no evidence of the submission or having submitted the final report physically on 26th May 2025.

The witness confirmed that the report alleged to have forwarded was neither dated nor authenticated by herself or anyone else and had no evidence of having cleared before her email dated 19th June 2025.

That the email dated 2nd March 2025 related to a pending activity and was part of clearance.

On re-examination, **CWI** admitted that she accepted the 14 days contract because she had worked.

Respondent's evidence

Dr. Elizabeth Omondi, the UBJ Program Supervisor confirmed that she neither filed the close out contract nor her employment contract and the close out contract contained no indication as to who the supervisor was.

The witness confirmed that the close out contract called the claimant back to work to work and had a job description.

It was her testimony that she could not tell how many days different groups were given for purposes of close out but the award had a criteria based on responsibilities.

That the Program Officer generated data and the senior management prepared the report and it had not been filed and no minutes of the senior management meeting had been filed.

That any work done after the end of the contract was on instructions and evidence based.

RWI confirmed that she did not receive any concerns from the claimant on the contract of engagement but received the email dated 21st May 2025 on **DSA** which was paid late because the funds were received late.

On re-examination, the witness testified that the claimant was not paid for the fixed term contract because she did not submit the report within the timelines given.

That the technical experts and Program Officers were given 14 days to conclude their work.

That the Program Officers did not file their reports within 14 days and were not paid for the 14 days.

Claimant's submissions

As to whether the respondent engaged the claimant after termination of employment notice dated 28th February 2025, counsel submitted that documentary evidence comprising emails, reports and assignments showed that there was active engagement after termination of

employment and in any case any variation of employments terms must be in writing.

Reliance was placed on the decisions in **Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 3 others** [2014] eKLR and **G4S Security Services Ltd V Joseph Kamau & 468 others** [2018] eKLR for the proposition that where an employee continued working after termination of employment, with the employer's knowledge, an implied contract arose and that an employee ought to be paid for work done respectively.

Counsel submitted that issuance of the 14 days fixed term contract was the respondent's admission of continued engagement of the claimant.

It was further submitted that the claimant discharged the burden of proof of continued rendering of services and the court ought to find that employment continued after service of the notice of termination of employment.

As to whether the claimant was entitled to payment for 90 days, counsel urged that since the claimant continued rendering services in March, April and May 2025, remuneration was due and payable as mandated by

Section 18(4) of the Employment Act as held in **G4S Security Services (K) Ltd V Joseph Kamau & 468 others** (supra).

Counsel submitted that the 14 days fixed term contract failed to capture the entire duration worked and cited the provisions of Article 41 of the Constitution on the right to fair remuneration and urge that the claimant stood to suffer irreparable prejudice.

Reliance was also placed on the decision in **Kenya Union of Commercial Food & Allied Workers V Water Resources Management Authority [2015] eKLR**, for the proposition that failure to pay for services rendered constituted an unfair labour practice.

As to whether the respondent violated the provisions of Article 41 of the Constitution, counsel relied on the decisions in **Kenya Union of Commercial Food & Allied Workers V Water Resources Management Authority** (supra) and **G4S Security Services (K) Ltd V Joseph Kamau & 468 others** (supra) to urge that the failure by the respondent to pay for the 90 days period violated the Constitution of Kenya.

Finally, counsel submitted that the claimant was entitled to a certificate of service, costs of the suit and interest.

Respondent's submissions

As to whether the claimant was engaged by the respondent for 90 days as claimed, counsel cited the Evidence Act and the sentiments of Majanja J in **Evans Otieno Nyakwana V Cleophas Bwana Ongaro** [2015] eKLR on the mantra that one who asserts bears the burden of proof, as were those of the court in **Sibanda V Mwonzora** 2020 ZWEHC 713, to submit that the claimant voluntarily signed the 14 days fixed term contract and the Program Officers had requested the same including *per diem* for 14 days which the claimant admitted having received and had already worked by 29th April 2025 and relocated.

That the emails from Dr. Solomon Orero were meant to facilitate clearance and close out activities were to start concurrently and the claimant had not proved that she worked and/or was engaged by the respondent for 90 days.

On the alleged discrimination on account of the 14 days contract as opposed to 90 days, relying on the letter to one Mary Kosuri who was accorded 90 days, counsel submitted that Mercy Kosuri was in charge of Human Resource and Administration and the claimant was a Program Officer and Warren Ouma Sule was a Finance Officer and having availed no evidence of having worked for 90 days the allegation of discrimination was unproven. Moreover, the claimant provided no evidence to prove that other Program Officers were treated differently.

That the 90 days provided by the Grand and Co-operative Agreement related to submission of costs incurred and unpaid in the course of performance and the claimant could not hang on that clause.

Counsel submitted that the role of courts was to interpret contracts not to rewrite them as held in **Mugo V Equity Bank Ltd** [2023] KEHC 24167 (KLR) and **National Bank of Kenya Ltd V Pipe Plastic Samkolit (K) Ltd** [2011] eKLR.

That the claimant never alleged fraud, coercion or undue influence when she signed the 14 days contract.

On entitlement to pay for 14 days counsel submitted that the claimant was not paid because she did not submit the final report, within the timelines required of Program Officers, provided no evidence of having submitted any report and admitted that a report was required at the end of the contract period.

Counsel further submitted that a copy of the report she had attached was not hers but that of Oranjah Elijah. According to counsel, the late submission of the report disentitled the claimant any pay.

Counsel urged the court to find that no payment was due, and if any, the 14 days contract exclusively.

Analysis and determination

It is not in dispute that the USAID/Kenya and Jaramogi Oginga Odinga University of Science and Technology (JOOUST) entered into Grant and Co-operative Agreement named USAID BORESHA JAMII in January 2023 for 3 years and the claimant was employed as a Program Office in November 2024.

It is also not in contest that the program was abruptly terminated vide letter dated 26th February 2025, which

directed the respondent to cease all activities immediately and terminate all sub-awards and contracts because it had been decided by the Acting Administrator of the United States Agency for International Development (USAID) that the Program was not in the national interest.

Equally not in contest is the fact that the respondent terminated the claimant's employment vide letter dated 28th February 2025 and was paid salary in *lieu* of notice gratuity and was required to clear and submit a handover report. The termination notice gave the implementing partner, the respondent no option but to terminate all sub-awards and contracts immediately.

This act of the Government of the United States of America frustrated the contracts entered into by the respondent with 3rd parties.

However, according to the claimant, she continued rendering services for another 90 days and handed in a report on 19th June 2025, having signed a 14 days fixed term contract.

The claimant's case was grounded on the fact that since the award had a close out period of 90 days, she had 90 days of close out but availed no contract to that effect.

According to the respondent, while the award provided for a 90 days close out period, the respondent gave different groups varied close out periods based on their role and Program Officers were accorded 14 days only.

Documents on record showed that the Human Resource Administrator In charge and the Finance Officer were given 90 days.

Although the claimant testified that she worked for 90 days close out period, she could not neither explain nor evidentiary demonstrate what she was actually doing for the duration or part of it because all activities other than clearance were to cease.

Relatedly, the claimant was expected, and admitted on cross-examination, to submit a report of her work but availed no report under her name or signature.

The report at pages 51 to 74 of the claimants bundle of documents, which the claimant relied upon had neither a date, signature or authentication by any person.

It had no cover page, title or the person or persons to whom it was addressed and lacked any evidential value.

The claimant would have proved that she prepared a report by availing a copy of the report she submitted either in hard copy as alleged or by email dated 19th June 2025 to Professor Emily Akuno and copied to others including Dr. Solomon Orero, the Chief of Party or of the draft submitted earlier.

Without a copy of the report, which the witness admitted, she was expected to prepare and submit to the supervisor, or schedule of activities, it was difficult for the claimant to demonstrate the tasks she was discharging for 90 days bearing in mind that she had no contract of engagement for such number of days and no payment was being made.

For the court to infer that the claimant was indeed rendering services, the inference must be grounded on evidence of the tasks accomplished by the claimant and bearing in mind that the claimant was a Program Officer in the filed, the report prepared would have been a principal piece of evidence.

The absence of a report authored or prepared and submitted by the claimant or evidence of the tasks accomplished substantially weakened the foundation of the claimant's case of having worked for 90 days after the employment contract was terminated. No doubt some work was done.

Significantly, the emails from Dr. Solomon Orero reveal that preparation for clearance started before the termination letter dated 26th February 2025, and vide email dated 11th March 2025 Dr. Solomon Orero requested all persons were to clear and no new tasks were given to employees.

The court notes that it took long to clear as employees were awaiting the close out contracts and had been promised a 14 days contract as evidenced by the letter dated 28th April 2025.

Section 17 of the Employment Act provides that:

- (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 employees behalf.

The foregoing provision leaves no doubt that salary or wages must be earned by the employee or become payable to the employee in respect of work done.

See **Benard Nyakina Nyanguki & 7 others V Polysack Ltd** [2019] eKLR.

The court is at a loss on what the claimant actually did for 90 days bearing in mind that she was previously a full-time employee. As observed above, without a schedule or table of tasks accomplished and when, including the

outcome, the court's hands are tied by the absence of evidence.

Relatedly, having admitted that she accepted and signed the 14 days contract provided by the respondent the, contract lapsed after 14 days of execution.

The principles that govern fixed term contracts are well settled by several decisions of the Court of Appeal including **Registered Trustees of the Presbyterian Church of East Africa & another V Ruth Gathoni Ngotho** [2017] eKLR where the court *held*

“Bearing the foregoing in mind, we note that fixed term contract carries no rights, obligations, or expectations beyond the date of expiry...

Since the respondents contract came to an end by effluxion of time, any claim for wrongful termination could not be maintained”.

See also **Registered Trustees De La Salle Christian Brothers T/A St. Marys Boys Secondary School V Julius D. M. Baini** [2017] eKLR, **Francis Chire Chachi V Amalsi Water Services Co. Ltd** [2012] eKLR.

Finally, in **Transparency International Kenya V Teresa Carlo Omondi** [2023] KECA 174 (KLR), the court held:

“The court is in agreement with these sentiments. We dare say an automatically renewable fixed term contract is a contradiction in terms as it would subject the parties to an indeterminate employment contract. The respondent was under a fixed contract with a definite commencement dated and termination date...”

Other than the 14 days fixed term contract, the claimant tendered no credible evidence of having worked from 1st March 2025 to 30th May 2025.

The claimant’s contention that others were given 90 days contracts or that the Award contract provided for a 90 days close could not avail the claimant on account that Program Officers, Human Resource and Finance Officers performed different and distinct roles in order to make the project successful and the implementing partner had the discretion to determine the number of days different categories of employees would have for purposes of close out.

It is trite that employees whose role involved provision of inputs into other processes would generally close out first to facilitate completion of those other processes such as provision of data or claims for purposes of payment.

According to the claimant, all employees had the same number of days which would have suggested that all employees were to conclude their roles at the same time, which would be impracticable.

It requires no gainsaying that Human Resource and Finance are tend to be the last to clear in most instances on account of their roles. They manage the rest. All employees must be paid what is due to them. While the Human Resource is responsible for the payroll, Finance concludes the process by paying the amount due to employees and other creditors of the organization.

Appropriate Relief

Having found that the claimant failed to demonstrate that she had an employment contract with the respondent from 1st March 2025 or rendered services for 90 days from 1st March 2025 to 30th May 2025, the only contractual relationship the claimant had with the respondent was the 14 days fixed term contract which

she voluntarily signed, a fact she admitted on cross-examination.

The claimant adduced no evidence to show that she acted in any position whatsoever. The declaration sought is declined.

The claimant is thus entitled to salary and gratuity for 14 days computed by the respondent as follows: Salary Kshs.99,170 and gratuity Kshs.19,372.8, Total Kshs.118,542.80.

A certificate of service is a statutory right by dint of Section 51 of the Employment Act and ought to be issued within 30 days from the date hereof.

The claimant shall have costs of the suit at $\frac{1}{2}$ scale.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 19TH DAY OF FEBRUARY 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