

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

**CAUSE NO. E046 OF 2025**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**CORNEL MITO ONGORE.....**  
**CLAIMANT**

**VERSUS**

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

.....**RESPONDENT**

**JUDGMENT**

The claimant commenced the instant suit vide a Memorandum of Claim dated 8<sup>th</sup> June 2025 alleging non-payment for days worked.

The claimant's case was that he worked for 90 days for the close out but signed a 14 days contract in May 2025 and prayed for:

- (i) A declaration that non-payment of acting allowance was unlawful.*
- (ii) 762,064.00 comprising 3 month's salary in lieu of notice, gratuity, reimbursement, certificate of service, costs of the suit and*

(iii) *Any other or further relief the court may deem just and fit to grant.*

The respondent denied the allegations made by the claimant but admitted that his employment contract was terminated as alleged following a stop-work, Order and denied having allocated work thereafter and the alleged 90 days close out period was not captured in the 14 days contract.

On cross-examination, the claimant confirmed that he received the letter of termination of employment dated 28<sup>th</sup> February 2025 and was paid for the month of February 2025 and salary in *lieu* of notice.

The witness confirmed that he submitted two reports but had no evidence of the submission. According to the claimant a copy of his report may have been misfiled as the one on record was submitted by Mr. Oranjah Elijah and had no date. That he had submitted the final report to Maureen Mabira on 27<sup>th</sup> May 2025.

On re-examination, the claimant testified that the report he submitted could not bear his name because he could not alter the template.

**RWI**, Dr. Elizabeth Omondi confirmed that she was the claimant's supervisor but had neither filed her contract of employment nor evidence of being the supervisor, but added that the emails on record showed that she was the supervisor.

The witness testified that the close out contracts had a job description and re-called the employees back to work.

That the Program Officers generated data from the field for the project and reports.

The witness admitted that she had no evidence of the number of days the various categories of employees were given for purposes of close out but added that the award had a criteria dependent on responsibilities and need.

**RWI** testified that the senior management team prepared a report although it was not filed and minutes of the meeting of the team were not filed either.

The witness testified that the Program Officers refused to file their reports within the 14 days and were thus not paid for the 14 days. The witness testified that she did

not receive any concerns from the claimant but received the email, dated 21<sup>st</sup> May 2025 but did not respond.

It was her testimony that Daily Subsistence Allowance (DSA) payable for daily activities was paid late because the cash was received late.

On re-examination, the witness reiterated that the fixed term contract was not paid for because the Program Officers did not submit their report within the 14 days timeline given and as late as 16<sup>th</sup> April 2025 the witness was requesting for the reports.

### **Claimant's submission**

As to whether the claimant worked for the respondent from 1<sup>st</sup> March 2025 to 30<sup>th</sup> May 2025 counsel submitted that the claimant availed documentary evidence and a 72 page NOFO reporting template sent on 15<sup>th</sup> April 2025, including emails requesting for close out reports and the testimony of the Finance Officer Warren Sule.

Reliance was placed on the decisions in **Kenya Airways Ltd V Aviation and Allied Workers Union Kenya & 3 others** [2014] eKLR on continuation of work by an employee with the employers knowledge and **G4S**

**Security Services (K) Ltd V Joseph Kamau & 468 others** [2018] eKLR on compensation of an employee for work done to urge the court to find that the claimant rendered services from March to May 2025.

The provisions of Section 10(1) and 18(2) of the Employment Act were relied upon to urge that the respondent was obligated to provide a written contract and wages ought to have been paid promptly. That the selective treatment of employees amounted to discrimination.

Reliance was made in the **G4S Security Services (K) Ltd Case** (supra) and **Kenya Airways Ltd V Aviation & Allied workers Union Kenya & 3 Others** (supra) to submit that by failing to pay wages to the claimant, the respondent violated the claimant's constitutional right.

On reliefs, counsel submitted that the claimant was entitled to three (3) month's salary Kshs.637,524.00, gratuity Kshs.124,546, reimbursement of Kshs.70,000 total Kshs.762,064 and a certificate of service regardless of clearance, as well as costs and interest.

## **Respondent's submissions**

As to whether the claimant was engaged by the respondent for 90 days, counsel cited the sentiments of Majanja J in **Evans Otieno Nyakwana V Cleophas Bwana Ogaro** [2015] eKLR on the burden of proof as provided for under Section 107 of the Evidence Act. Also cited was the foreign decision in **Sibanda V Mwonzora & 4 others** on the same principle of law.

Counsel urged that the claimant had with other Program Officers requested for a 14 days contract and *per diem* and received the latter as admitted in court.

According to counsel, documents availed by the claimant showed that she worked for 14 days and had not proved that she worked or was engaged by the respondent for 90 days.

On discrimination based on the 14 days contract, counsel submitted that Mercy Kosuri whose 90 days contract was availed as evidence was in charge of Human Resource and Administration and Mr. Warren Sule was the Finance Officer whose roles were different from the claimant's who was a Program Officer.

Counsel submitted that the 90 days close out period for the Grant and Co-operation Agreement was to enable the

recipient of the award to submit any unpaid costs on incomplete milestones and was not intended to accord every employee of the respondent a 90 days contract of employment.

Counsel urged that under the law, the duty of courts was to enforce contracts, not to rewrite them citing **Mugo V Equity bank Ltd** [2023] KEHC 24167 (KLR) and **National Bank of Kenya Ltd V Pipelastik Samkolit (K) Ltd** [2011] eKLR to submit that the claimant signed the 14 days contract freely and willingly.

On payment for 14 days counsel submitted that the claimant was not paid because she did not submit the final report citing the email by Cornel Ongoro on 21<sup>st</sup> May 2025 to the effect that Program Officers would not share final reports until their concerns were addressed.

Counsel urged that USAID had strict timelines which the claimant did not meet.

Finally, counsel submitted that the claimant had not the claim against the respondent.

## **Analysis and determination**

It is common ground that the claimant was employed by the respondent as a Program Officer effective 1<sup>st</sup> October 2024 for 12 months, until 30<sup>th</sup> September 2025 at Kshs.212,508.00 per month and gratuity at 31% of the basic salary and Dr. Mubiria was the supervisor.

It is equally not in contest that the contract of employment was terminated vide letter date 28<sup>th</sup> February 2025 following a stop-work Order dated 26<sup>th</sup> February 2025.

The letter required the claimant to submit a hand over report, assets, documents or equipment belonging to the respondent and clear for a certificate of service to issue.

However, according to the claimant, work continued as before as evidenced by emails from the respondent.

I will sample some of the emails on record to highlight the circumstances obtaining after termination of employment on 28<sup>th</sup> February 2025.

By email dated 1<sup>st</sup> March 2025 by Dr. Maureen Mubiria to Dr. Solomon Orero and all staff, the formed informed the latter that they would be evacuating the Kakamega office

that week and all staff based at the office were required to process all pending paperwork and retrieve personal belongings by 4<sup>th</sup> March 2025.

Equally, Dr. Solomon Orero's email to all staff dated 28<sup>th</sup> February 2025 informed all staff to stop working.

Similarly, by email dated 11<sup>th</sup> March 2025, Dr. Solomon Orero directed all staff to urgently confirm liquidation of imprests as directed earlier, submission of time sheets up to January 26<sup>th</sup> what was meant to be done from February some of the activities accomplished up to January 2025 as detailed in Q2 Work Plan, activities recommended for counties and arrange for clearance. Program Officers were to confirm whether all activities requiring payment had been processed to facilitate processing of liabilities and final dues.

Finally, Human Resource, Procurement, IT, SMT and Finance were required to arrange to be in Kisumu Office on Friday 14<sup>th</sup> March 2025.

This email made it clear that the officers mentioned were not in the office or working on a daily basis while others had clear instructions to clear.

From the emails, it is discernible that from mid March 2025 to late April 2025, there was nominal email or other communication between Dr. Solomon Orero, the Chief of Party and staff as evidenced by Mercy Kosuri's email dated 21<sup>st</sup> May 2025. However, Dr. Orero had sent an email on 2<sup>nd</sup> May 2025 on recalling of staff.

As regards the claimant specifically, emails reveal that two approval requests were made on 12<sup>th</sup> May 2025, one (1) on 21<sup>st</sup> March 2025, one (1) on 2<sup>nd</sup> March 2025, and notifications for review on 15<sup>th</sup> March 2025, 12<sup>th</sup> May 2025, 17<sup>th</sup> March 2025, 11<sup>th</sup> March 2025 and 7<sup>th</sup> March 2025 and finally approval of supply of snacks to members of the Data Review meeting on 15<sup>th</sup> May 2025, about 12 transactions in total.

While these emails reveal that some tasks were discharged on some days and payments were approved for purposes of the close out, they fall short of demonstrating that the claimant was discharging the responsibilities he was discharging before the employment contract was terminated bearing in mind the fact that in March and April he had no contract of service with the respondent.

Similarly, while requests for approval were made, approvals granted and payments made, there was no schedule of the activities accomplished or a report of what was done over the 90 days period for which remuneration was being claimed.

Regrettably, the claimant did not attach a copy of the response to the email by Dr. Solomon Orero dated 11<sup>th</sup> March 2025, which sought very specific information on various aspects of the project, including clearance.

The email was followed up by another dated 28<sup>th</sup> March 2025 on time sheets for January 2025, vendor documents, motor vehicles, registers, schedule of distribution of branding material to counties for purposes of clearance. In the meantime, RWI was following up on the reports.

Notably, by their letter dated 28<sup>th</sup> April 2025, the Program Officers including the claimant were clear that they had relocated from the office and could only travel back if facilitated, had no active contract, had been directed to conclude their reports within 14 days, final dues had not

been paid, were eager to sign off and two (2) week *per diem* had not been paid.

Instructively, the email made no reference to any unpaid salary for March and April 2025.

A panoramic view of the evidence on record reveals that the claimant discharged the obligations of his office intermittently as he awaited the close out contract and in furtherance of the clearing process. The emails from Dr. Solomon Orero and Dr. Elizabeth Omondi encouraged the employees to conclude the pending process for purposes of payment and clearance.

In the court's view, none of the emails on record introduced tasks outside the payment and clearance processes and the respondent could only assess the quantum of the work done in terms of days and for Program Officers; it arrived at 14 days, and the claimant voluntarily accepted and signed the 14 days fixed term contract.

Since the emails from Dr. Solomon Orero and Dr. Elizabeth Omondi did not prescribe daily activities for staff nor were they operating under any written

contractual arrangement, it was incumbent upon the employees and in this case the claimant to prove what tasks he accomplished for the 90 days close out period prayed for.

This is a claim for special damages which must be specifically pleaded and strictly proved.

In **Coast Bus Service Ltd V Sisco & Murunga Danii & 3 others** Civil Appeal No. 192 of 1992 the Court of Appeal held:

*“We would restate the position special damages must be pleaded with as much particularity as circumstances permit and in this connection, it is not enough to simply aver in the plain as was done in this case... It is only where the particulars of the special damage are pleaded in the plaint that a claimant will be allowed to proceed to the strict proof of those particulars”.*

See in this regard **Charles Sande V Kenya Co-operative Creameries Ltd** Civil Appeal No. 154 of 1992 for the proposition that unless special damages are pleaded, they cannot be proved.

See also **Miriam Maghema Ali V Jackson M. Nyambu t/a Sisera Store** Civil Appeal No. 5 of 1990, **Idi Ayub Shabani V City Council of Nairobi** [1982-1988] 1 KAR [1948] 64 T LR 177, **David Bagine V Martin Bundi** [1997] KECA 54 (KLR) **Hahn V Singh** [1995] KLR 716, **Securicor (K) Ltd V Esther Oliech** [1996] KECA 89 (KLR) among others.

In this case, the claimant did not particularize the tasks undertaken or accomplishment made during the 90 days claimed.

Neither the Memorandum of Claim nor the written witness statement dated on 8<sup>th</sup> June 2025 highlighted or exemplified the responsibilities or duties discharged or the reports prepared.

Relatedly, although the claimant testified that he submitted the final report on 27<sup>th</sup> May 2025 and a physical copy to Dr. Maureen Mubiria, he admitted that he had no evidence of the alleged submission nor copy of the report submitted and attributed the omission to misfiling of the report on account that the report on record, which other Program Officers relied upon as their own states that it was submitted by one Oranjah Elijah.

Having failed to particularize the special damages in his pleadings and availed credible evidence of having been at the workplace rendering services for 90 days after the employment contract was terminated, the claim for special damages remained unproven.

Be that as it may, the claimant admitted having accepted and signed the 14 days fixed term contract dated 1<sup>st</sup> April 2025 and was thus entitled to payment in accordance with the terms of the agreement namely gross salary and gratuity.

RWI admitted that the respondent did not honour its obligations under the agreement and ought to do so.

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 1<sup>st</sup> March 2025 to 30<sup>th</sup> 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 reliefs**

### **(i) Declaration**

The claimant adduced no evidence to establish that he was appointed or acted in any position and was not paid acting allowance.

Neither the Memorandum of Claim nor the written witness statement or the evidence adduced in court made reference to any acting appointment.

The claim was not proved and it is dismissed.

### **(ii) Kshs.762,064.00**

Having found that the claimant failed to prove that he remained in employment after his contract of employment was terminated on 28<sup>th</sup> February 2025, the claim for 3 months salary was unproved.

However, the claimant was entitled to salary for 14 days and gratuity as provided by the contract he signed.

The court could not trace a copy of the agreement among the claimants list of documents. The respondent shall pay the amount due to the claimant.

**(iii) Certificate of service**

The claimant is entitled to a certificate of service by dint of Section 51 of the Employment Act unless issued previously.

The claimant is awarded costs at ½ scale.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT  
KISUMU ON THIS 19<sup>TH</sup> 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**