

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT KISUMU**  
**CAUSE NO. E044 OF 2025**

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

**ELIJAH OLOO ORANJAH.....**  
.....**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 claiming unpaid work days.

The claimant's case was that he was employed by the respondent as a Program Officer on 14<sup>th</sup> October 2024 at Kshs.202,388 per month and employment was terminated vide letter dated 28<sup>th</sup> February 2025 but he continued receiving instructions in March April and May 2025 and the 14 days fixed term contract excluded the 90 days worked.

The claimant prayed for:

- (i) A declaration that the respondent's failure to pay acting allowances was unlawful.*
- (ii) Kshs.725,773.*
- (iii) Certificate of service.*
- (iv) Gratuity Kshs.118,609.*
- (v) Cost of the suit and*
- (vi) Any other relief the court deemed fit to grant.*

The respondent's case was that the claimant was its employee effective 24<sup>th</sup> November 2024 based at the Kakamega Branch.

It admitted that the claimant's contract of employment was terminated after the USAID issued a work-stop Order but denied having allocated work to the claimant in March, April and May 2025 or that he worked for 90 days after his employment was terminated. According to the respondent, the claimant was paid in full and the only entitlement due was the certificate of service.

The respondent sought the dismissal of the claimant's case with costs.

On cross-examination, the claimant confirmed that the termination of employment was immediate and he was

engaged from 1<sup>st</sup> March to 30<sup>th</sup> May 2025 and had attached evidence of work done. He also admitted having accepted and signed the fixed term contract dated 1<sup>st</sup> April 2025 as part of the 90 days.

It was his testimony that he requested for *per diem* for 14 days and forwarded the final report on 18<sup>th</sup> May 2025 and a draft on 28<sup>th</sup> April 2025.

The witness admitted that as per the email dated 21<sup>st</sup> May 2025, Program Officers were scattered all over the country.

That he was part of the technical team and his report was necessary for compilation of the report.

### **Respondents 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 21<sup>st</sup> 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 claimant was engaged by the respondent beyond 28<sup>th</sup> February 2025 counsel submitted that the evidence on record showed that the claimant continued rendering services throughout March, April and May 2025 as evidenced by emails, reports and assignments.

That contrary to the provisions of Section 10(5) of the Employment Act, the respondent failed to issue proper documentation of the contract of service.

Reliance was placed on the decisions in **Kenya Airways Ltd V Aviation and Allied workers Union Kenya & 3 others** [2014] eKLR and **G4S Security Services (K) Ltd V Joseph Kamau & 468 others** [2018] on payment of salary or wages for services rendered and implied contract of service.

Counsel urge that issuance of the 14 days contract was an admission of continued engagement.

Counsel submitted that the respondent violated the claimant's right to fair labour practices under Article 41 of the Constitution of Kenya and the claimant discharged the burden of proof under Section 47(5) of the Employment Act.

Counsel urged the court to find that respondent engaged the claimant beyond 28<sup>th</sup> February 2025.

As to whether the claimant was entitled to payment for 90 days, counsel submitted that he was an employee as the respondent continued allocating tasks after termination of employment and Section 18(4) of the Employment Act obligated an employer to pay for work done as held in **G4S Security Services (K) Ltd V Joseph Kamau & 468 others** (supra).

Reliance was also placed on the decision in **National Bank of Kenya Ltd V Pipeplastic Samkolit (K) Ltd & another** [2001] KLR on unjust enrichment.

It was further submitted that non-payment of wages for work done amounted to an unfair labour practice contrary

to Article 41 of the Constitution of Kenya. Reliance was placed on the decision in **Kenya Union of Commercial Food & Allied Workers V Water Resources Management Authority** [2015] eKLR to urge that the respondent violated the provisions of the Employment Act and Article 41 of the Constitution of Kenya and the claimant was entitled to payment for 90 days.

On reliefs, counsel submitted that the claimant was entitled to a certificate of service by dint of Section 51 of the Employment Act, three month's salary, gratuity, 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**

The respondent employed the claimant as a Program Officer - Child Health Grade 12 at Kshs.202,388 under the UBJ Program effective 8<sup>th</sup> October 2024 based in Kakamega.

The claimant's case was that despite termination of the employment contract on 28<sup>th</sup> February 2025, he continued rendering services in March, April and May 2025.

By an internal memo dated 31<sup>st</sup> January 2025 the respondent's Deputy Vice-Chancellor informed all UBJ

staff to stop work and proceed on unpaid leave from 1<sup>st</sup> February 2025 for 90 days awaiting further communication.

This memo under reference stop work/suspension of work Order contextualized Dr. Solmon Orero's emails in February 2025 which required urgent action on liquidation of imprests by 13<sup>th</sup> February 2025, forwarding of documents for payment by 13<sup>th</sup> February 2025, sorting of a car at the garage by Amos Ochieng and delivery of registers, all staff were to submit time sheets for January 2025 and keep phones and emails open.

On 17<sup>th</sup> February 2025, Dr. Mubiria requested Program Officers to populate a template for purposes of the stop work Order and Mr. Ongore was to consolidate and share by 1215hrs.

An earlier email of even date had requested all staff to urgently submit and confirm liquidating imprests and activities accomplished by January 25 as detailed in Q2 work plan, what was to be done in February 2025, activities recommended for counties and arrange clearance. Programme Officers were to confirm that all activities requiring payment had been paid for and

Human Resource, Procurement, IT, Senior Management team and Finance to be in Kisumu Office on 14<sup>th</sup> February 2025 for purposes of clearance. The earlier email followed immediately thereafter.

As regards the tasks accomplished the claimant attached activity memos dated 21<sup>st</sup> March 2025(2), 17<sup>th</sup> March 2025 Dr. Orero's email dated 11<sup>th</sup> March 2025 on clearance, approval requests dated 7<sup>th</sup> March 2025(3), clearance of imprest by Mr. Vincent Nyangau (3<sup>rd</sup> March 2025), activity requesting dated 2<sup>nd</sup> March 2025(3) and email from Dr. Maureen Mubina dated 2<sup>nd</sup> March 2025 on project termination.

These emails reveal that the claimant rendered services in March 2025 though not on a delay basis or for the entire day.

Notably, clearance was supposed to commence on 1<sup>st</sup> April 2025 as intimated by Human Resource vide its email dated 31<sup>st</sup> March 2025.

In addition, the claimant attached two unauthenticated pages bearing names of staff and position on roles allegedly performed with a start and end date. The pages had neither a tittle nor origin.

The two pages were not in the form of an email or under the programs letter head, if any, and had no approval date or signature by any supervisor.

In a nutshell the pages lacked any evidential value.

Strangely, by email dated 21<sup>st</sup> May 2025 addressed to Dr. Immerculate A. Ayodo, Professor Emily A. Akuno and copied to Dr. Solmon Orero and Mercy Ayodo Kosuri, the claimant purported to decline the 14 days fixed term contract which he had already voluntarily signed contending that he offered services to the project in March 2025 on pending field activities and later the close out in April. He sought the respondent's reconsideration of the duration to 60 days. This proposal by the claimant suggested that he had not offered services to the project for 90 days as alleged.

Similarly, by an email dated 28<sup>th</sup> May 2025, the claimant alleged that he spent the entire month of April 2025 writing the child health close out report 2021 to 2025.

A copy of the report on record bore the claimant's name and other claimants alleged it belonged to them too and

none denied that Mr. Oranjah Elijah forwarded the report to the respondent.

Noteworthy vide email dated 1<sup>st</sup> April 2025, the claimant forwarded the final close out report to Dr. Elizabeth Omondi and copied the email to Mercy Adoyo Kosuri.

Emails on record revealed that as late as 6<sup>th</sup> May 2025, Dr. Solomon Orero was pleading with employees to submit their reports so as to conclude all close out and separation issues and by 10<sup>th</sup> May 2025, he notified staff that offices would be closed by 15<sup>th</sup> May 2025 and urged employees to clear.

Significantly, the claimant attached copies of his clearance documents showing that he cleared with all Departments on 30<sup>th</sup> May 2025 and he also completed the exit questionnaire although it was undated.

It is trite that a contract is a legally binding agreement made between two or more parties. A contract of service or employment consists of two parties where one agrees to employ while the employee agree to render services at a money consideration called salary or wage and the

contract may be oral or written and thus express or implied.

When a contract of employment is terminated by agreement, the parties are discharged from further performance and the relationship comes to an end. The mutual promises constitute consideration.

For another employment relationship to be inferred, it must be proved that the parties related in ways which showed that both intended to have an employer/employee relationship.

The conduct of the parties must clearly demonstrate that intention.

In the instant case, the claimant relied on emails and activity requests to urge that he continued rendering services after 28<sup>th</sup> February 2025 and actively participated in the close out process in April 2025.

Since the respondent denied that the claimant rendered any services after termination of the employment, it behooved the claimant to evidentiary demonstrate that he rendered services and in the absence of time sheets

or attendance registers, the claimant had to employ other ways of establishing that he rendered services in consonance with the provisions of Section 107, 108 and 109 of the Evidence Act that he who alleges bears the burden of proof.

See **Ignatius Makau Mutisya V Reuben Musyoka Muli** [2015] KECA 612 (KLR).

A careful evaluation of the activity requests filed by the claimant dating from March 2<sup>nd</sup> 2025 revealed that the claimant continued performing official functions from 2<sup>nd</sup> March 2025 which continued until 21<sup>st</sup> March 2025. The court counted a total of 13 requests before the formal clearance commenced on 1<sup>st</sup> April 2025 following the email from Mercy Kosuri dated 31<sup>st</sup> March 2025.

Although the claimant alleged that he utilized the entire month of April 2025 compiling the close out report from 2021 to 2025 both qualitatively and quantitatively, he adduced no specific evidence save the report on record, a 26 page document.

Although the report on record was neither dated nor signed by the claimant, the respondent did not contest it or its contents or that Mr. Oranjah Elijah did not submit

the report as he alleged and being the only Program Officer who indicated via email that he compiled the report on record, the court is satisfied that the claimant had demonstrated on a preponderance of probabilities that he did more than any other Program Officer prior and during the close out process and in the court's view is entitled to payment for a total of 35 days inclusive of the 14 days fixed contract of service which he voluntarily signed and gratuity.

The court is satisfied that the claimant earned the salary and gratuity for the 35 days effective 2<sup>nd</sup> March 2025 and thus met the threshold of Section 17(1) of the Employment Act.

Creditably, the claimant did not pray for remuneration for 90 days because the Grant and Co-operation Agreement provided for lodgement of claims within 90 days of termination of the agreement or on account of Mercy Kosuri's fixed term contract, which he filed, but that he worked for that number of days, though unable to establish that he indeed worked on each of the 90 days.

Thus to the issue whether the claimant proved that he rendered services for 90 days without pay, the court

returns that although the claimant demonstrated that he rendered services effective 2<sup>nd</sup> March 2025, the court counted about 13 instances when the services were rendered prior to the preparation of the close out reports and before promises of payment were made and the claimant compiled the report on record in April 2025, which accounts for the 21 days compensation over and above the fixed term contract.

Having signed the fixed term contract, willingly, the claimant was bound by its terms, the purported retraction notwithstanding.

As Mellish LJ held in **Parker V South Eastern Railway Co. Ltd** [1877] 2 CPD 416

*“In an ordinary case, where an action is brought on a written agreement which is signed by the defendant, the agreement is proved by his signature, and, in the absence of fraud, it is wholly immaterial that he has not read the agreement and does not know its contents”.* See also **L’Estrange V. Graucob Ltd** [1934] 2 KB 394.

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**

Puzzlingly, the claimant adduced no evidence of having been appointed to act in any position or that acting allowance was not paid.

Both the Memorandum of Claim and the witness statement were silent on acting appointment or acting allowance.

The prayer was not proved and it dismissed.

#### **(ii) Kshs.725,773.00**

As adverted to elsewhere in this judgment, although the claimant failed to prove that he was actively rendering services on all the 90 days prayed for, the documentary evidence of the tasks accomplished, including a copy of the report he compiled left no doubt that the claimant rendered services for more than the 14

days accorded to all Program Officers hence the additional award of 21 days a total of 35 days and gratuity.

**(iii) Certificate of service**

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

It is unclear to the court why it was not issued after the claimant cleared and completed the exit interview.

In conclusion, judgment is entered in favour of the claimant against the respondent as follows:

- (a) Gross salary for 35 days and gratuity to be computed by the respondent.*
- (b) Certificate of service.*
- (c) Costs of the suit 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**