

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

CAUSE NO. E048 OF 2025

(Before Hon. Justice Dr. Jacob Gakeri)

WINFRED

ACHIENG

OLUOCH.....CLAIMANT

VERSUS

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

.....RESPONDENT

JUDGMENT

The claimant instituted the instant suit vide a Memorandum of Claim dated 8th June 2025 claiming payment for extra days allegedly worked after her contract of employment was terminated on 28th February 2025 following a stop-work Order dated 26th February 2025.

According to the claimant working continued for another 90 days and only 14 days were recognized by the fixed term contract dated 1st April 2025, thus the other days were unpaid for.

The claimant prayed for:

- (i) a declaration that failure to pay acting allowance was unlawful;*
- (ii) Kshs.725,773.00 comprising 3 month's salary and gratuity at 31% of (iii);*
- (iii) interest on (ii) above;*
- (iv) Certificate of service, costs of the suit;*
- (v) Gratuity and any other relief the court deemed fit to grant.*

The respondent admitted that the claimant was its employee effective 9th October 2024 as a Program Officer at Kshs.202,388 per month.

It also admitted termination of the claimant's employment on 28th February 2025 but denied having allocated tasks to the claimant in March, April and May 2025 and only engaged her for 14 days and was compensated.

The respondent denied that the claimant had a 90 days close out period but was entitled to a Certificate of Service. It prayed for dismissal of the suit with costs.

On cross-examination, the claimant confirmed that her employment contract ended on 28th February 2025 and

was paid terminal dues including salary in *lieu* of notice but added that she was engaged from 1st March 2025 to 30th May 2025 citing the fixed term contract as the engagement document though dated 1st April 2025 and although the witness testified that the contract was sent her via email from Mercy Kosuri, she had no evidence of the email or the date of receipt.

The witness admitted that the UBJ Programme was terminated abruptly and some claims were pending as were unsurrendered imprests. That she received emails on approval of clearing of pending bills in January 2025.

The witness admitted having signed the fixed term contract on 1st April 2025, for 14 days voluntarily and accepted its terms.

CWI admitted having authored the letter dated 28th April 2025 requesting for *per diem* for 14 days and acknowledged having received Dr. Solomon Orero's email dated 11th March 2025 on payment and clearance of all program activities and all program officers were supposed to submit reports for consolidation.

The witness testified that she submitted the report on 28th April 2025 and a hard copy on 6th May 2025.

The witness further confirmed that according to an email by a colleague dated 21st May 2025 Program Officers had dispersed.

That the claim for acting allowance was a typographical error.

CWII, Mercy Kosuri confirmed that she received the appointment letters on 13th May 2025 but had no evidence of having received the same on that day.

That the Grant and Co-operation Agreement between the respondent and the U.S.A.I.D provided for a 90 day close out period and Program Officers had a 14 days close out and were paid *per diem* for 14 days but was unaware that Program Officers had requested for a 14 day contract Mercy Kosuri confirmed that the claimant was paid salary in *lieu* of notice, salary for February 2025 and that the claimant accepted the fixed term contract and no time sheets were provided during the close out.

Respondent's evidence

RWI, Dr. Elizabeth Omondi testified that although she had neither filed her contract of employment to show that she was the claimant's supervisor, nor the close out contracts, emails on record stated so. It was her testimony that the close out contract recalled the claimant back to work and had a job description.

According to **RWI**, Program Officers generated data from the field but could not confirm how many days each category of employees was given for purposes of close out but added that the award established a criteria based on responsibility and need.

According to **RWI**, the senior management team neither filed the minutes of the meeting at which the report was prepared on the report nor the report.

The witness confirmed that the Program Officers refused to submit their reports within the 14 days given and were consequently not paid for the 14 days.

RWI testified that she did not receive any concerns from the claimant but received the email dated 21st May 2025 and did not respond.

That *per diem* was paid late on 21st May 2025 because the funds were received late and the fixed term contract was not paid for because the claimant did not submit her report within the agreed timelines.

On re-examination, **RWI** testified that although the award had a close out period of 90 days, the claimant was accorded 14 days and as the supervisor she requested for the reports vide email dated 15th April 2025 but the claimant and her colleagues did not submit reports or clear with the respondent.

Claimant's submission

On whether the claimant worked for the respondent for the entire close out period counsel urged that the claimant availed emails directing her to prepare reports, a 72 page NOFO reporting template sent on 15th April 2025 as well the respondent's emails on the close out reports.

That Mr. Warren Ouma's evidence confirmed that the claimant worked throughout March-May 2025.

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] eKLR, to urge that the claimant had an implied contract with the respondent.

Concerning violation of the Employment Act and Article 41 of the Constitution of Kenya, counsel submitted that the respondent's conduct amounted to a clear violation as it failed to provide a written contract of service and failed to pay wages for 90 days. That the respondent's conduct amounted to discrimination because Mr. Warren Sule's contract was regularised to 90 days.

Reliance was placed on the decision in **Kenya Union of Commercial Food and Allied Workers V Water Resources Management Authority** [2015] eKLR on failure to pay for services rendered.

On reliefs, counsel submitted that since the claimant had shown that he worked for 90 days he was entitled to outstanding dues Kshs.607,164.00, gratuity Kshs.118,609.00, certificate of costs and interest.

Claimant's submission

As to whether the claimant worked for the respondent from 1st March 2025 to 30th May 2025, counsel submitted that the claimant availed documentary evidence, a 72 page NOFO reporting template sent on 15th 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 employer's 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.

Counsel submitted that the selective treatment of employees amounted to discrimination.

Reliance was placed on the decision 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 and 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 21st 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-Child Health Grade 12 from 7th October 2024 to 30th September 2025 at a gross salary of Kshs.202,388.00 per month.

It is equally not in dispute that the claimant's employment contract was terminated on 28th February via a written notice to that effect and all dues were paid, but according to the claimant, the engagement continued for another 3 months but the contract she voluntarily signed recognized 14 days only and was thus suing for the unpaid days.

The claimant's case was founded on the proposition that the emails on record showed that she continued working from 1st March 2025 to 31st May 2025.

The first issue for determination is whether the claimant adduced sufficient evidence to demonstrate that she worked as before from 1st March to 31st May 2025 and was thus entitled to the 3 months salary claimed.

Under work done by the claimant, the claimant attached requests for approval forwarded to her dated 5th January 2025, 5th May 2025, 4th January 2025 (approval for both request was 31st March 2025) activity dated 31st March 2025 or rejected approval, and on dated 14th March 2025, 8th March 2025 and an approval dated 3rd March 2023, a total of seven (7) requests for action, two of which were made prior to termination of the contract of employment. In a nutshell only five (5) requests for action were made to the claimant directly after 28th February 2025.

These emails reveal that work requests were intermittent and far apart.

Significantly, by an email dated 11th February 2025 Dr. Solomon Orero had requested all staff under the UBJ Program to urgently clear imprests, if any, present relevant documents for activities done before 31st January 2025 for payment, forward vendor documents on payments by 13th February 2025, and the same be processed by Amos Ochieng, who was also to ensure that the vehicle in the garage was sorted and deliver registers and all staff were to submit time sheets for January 2025.

By a subsequent email dated 11th March 2025, which all staff were requested to treat as urgent required them to confirm liquidation of imprest, submission of time sheets and sharing final reports on all activities accomplished up to January 2025 as detailed in Q2 Work Plan, what was scheduled for February 2025 recommended activities for Counties, all activities that required payment had been processed and paid and arrange clearance.

Relatedly, the Human Resource, Procurement, IT, Finance and SMT were requested to be in Kisumu on 14th March 2025 to facilitate processing of liabilities and final dues.

A follow up email dated 28th March 2025 addressed vendor documents on payments by 31st March 2025, conclusion on vehicle issue and its collection, sorting out

of the double cabin by Mr. Amos Ochieng, delivery of registers, schedule of distribution of branding materials, submission of time sheets for January 2025 to make clearance effective and enable finalization of the process of separation.

Instructively, none of these emails required any employee to engage in the work they used to perform or complete pending field work or report to work.

Strangely, by an email dated 21st May 2025, the claimant purported to decline the close out contract she had signed arguing that she had undertaken field activities and later embarked on close out reporting and the period offered was insufficient.

The court noted that, by email dated 26th May 2025, the Vice-Chancellor of the respondent University, Professor Emily Akuno requested the claimant to urgently submit what she wanted considered namely; the work she did, and when for the line manger to confirm and was requested to expedite the same.

By email dated 28th May 2025, the claimant attached undisclosed zipped evidence from herself and one Elijah

which the Vice-Chancellor found surprising as her email of 28th May 2025 envinced.

Finally, by letter dated 28th April 2025, Program Officers including the claimant confirmed that they could only travel to the office if facilitated because they had relocated and were busy hustling for their children, had no active contract (though they had been promised a contract and *per diem* for 14 days) but had not materialised, unpaid dues, complained about presentation of the report, concern for close out contracts and 2 week *per diem*.

This letter laid it bare that the Program Officers had not been working for the respondent and had moved on especially because they had no contract, a fact they acknowledged. This was important because there were no time sheets or attendance registers.

It is trite law that a contract is a legally binding agreement made between two (2) or more parties. A contract of employment or contract of service may be by word of mouth or in writing it can also be implied from conduct of the parties.

Once a contract of employment is terminated, the employment relationship comes to an end. However, if the employee continues rendering services and is paid a salary, a new contract of service may be implied from conduct of the parties. There must have been an intention to enter into a legally enforceable agreement.

In this case, while the claimant alleged that she had a new contract of employment effective 1st March 2025 to 31st May 2025, the respondent contended that the only contract on record was the 14 days fixed term contract effective 1st April 2025.

From the emails on record, it is clear that the respondent directed its employees to start clearing from as early as 11th February 2025 before their employment contracts were terminated and the Chief of Party followed the communication by other emails insisting on confirmation of conclusion of processes including payments, imprest, tasks reporting and clearance and as adverted to elsewhere in this judgment, none of the emails on record requested or directed the claimant to conclude and/or engage in any filed activities from March 2025. The emails from Dr. Solomon Orero were on accomplished

tasks, reporting and payments and no salary was paid at the end of March.

Granted that the UBJ Program was terminated abruptly, the time lag in clearance and payments was inevitable and reports had to be prepared up to the date of termination of the program on 28th February 2025. The stop-work Orders was unambiguous.

On the tasks accomplished after 28th February 2025, the claimants seven (7) tasks on record could not account for the 14 days contract she was given by the respondent and had no schedule of work or accomplished tasks or reports prepared after 28th February 2025.

The report attached to the claimant's documents belonged to one Oranja Elijah but had neither a date nor authentication or date of submission and to whom.

Although the claimant testified that she submitted a report on 28th May 2025 and a final draft on 6th May 2025, she filed neither a copy of the report nor the email to which it was attached.

Relatedly, the claimant did not file the evidence she availed to Professor A. Akuno, the respondent's Vice-Chancellor for work done and when, for confirmation by the supervisor.

A careful evaluation of the documents on record revealed after the contract of employment was terminated the Program Officers worked at will and at one point they threatened to withhold the reports until their issues were addressed and when the fixed term contract was offered, they voluntarily signed it.

At common law, that signature *prima facie* means acceptance unless it was procured by duress, mistake undue influence or misrepresentation. (See **L'Estrange V Graudo Parker V South Eastern Railway Co.**).

In the court's view, the claimant failed to demonstrate that she rendered services continuously as an employee of the respondent from 1st March 2025 to 31st May 2025, the absence of timesheets notwithstanding.

It is trite law that he who alleges must prove the allegations as ordained by the provisions of Sections 107,

108 and 109 of the Evidence Act. The claimant bore the burden of proof.

Additionally, the claimant sought payment for 3 months because Mercy Adoyo Kosuri, the respondent's Human Resource and Administration Manager had a 3 months close out period yet the two were in different departments. The claimant was in the field as a Program Officer while Mercy Adoyo Kosuri was not and was the only Human Resource person at the time.

In a similar vein, the claimant alleged that the Grant and Co-operative Agreement between USAID and the respondent provided for a 90 days close out period.

Instructively, the contract gave the respondent 90 days close out period, not the claimant as she was not privy to the contract as she had not provided any consideration thereto.

The claimant had no rights or duties under the Grant and Co-operative Agreement between USAID and the respondent. Her rights as an employee were based on the contract of employment, Employment Act, the Constitution of Kenya and other relevant laws.

Having been contracted by the respondent, only the two parties could agree on the close out period and in this case they agreed that 14 days was sufficient and the claimant was bound by her signature appended on 1st April 2025.

Consequently, the claimant was entitled to payment in accordance with the terms of the 14 days fixed term contract.

Close related to the foregoing, the claimant prayed for 3 months salary, Kshs.607,164.00 and gratuity at 31% Kshs.118,609.

Needless to gainsay, this was a claim for special damages which in law must be specifically pleaded and strictly proved.

See in this regard **Hahn V Singh** [1985] KLR 716, **David Bagine V Martin Bundi** [1997] KECA 54 (KLR), **Securicor (K) Ltd V Esther Oliech** [1996] KECA 89 (KLR), **Miriam Maghema Ali V Jackson M. Nyambu ta/a Sisera Store** Civil Appeal No. 5 of 1990, **Idi Ayub Shaban V City Council of Nairobi** [1982 - 1988] 1 KAR

[1948] 64 tlr 177 and **Peter MarkGershom Ouma V Nairobi City Council** [1976] KEHC 3 (KLR).

In **Hahn V Singh** (supra) Kneller JA stated

“...special damages which must not only be claimed specifically but proved strictly for they are not the direct natural a probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and the nature of the acts themselves...”

In this case, the claimant did not enumerate or highlight the tasks she was requested to discharge, when and the outcome or any accomplishments made within 90 days.

Neither the Memorandum of Claim nor the written witness statement identified the specific duties or responsibilities discharged or any report prepared as evidence of work done.

Particulars of tasks accomplished and evidence of the same would have shown that the claimant earned her salary for 3 months prayed in consonance with the provisions of Section 17(1) of the Employment Act under

which an employer is bound to pay all the salary or wage earned by or payable to an employee in respect of work done by the employee pursuant to a contract of service.

Flowing from the foregoing it is discernible that the claimant failed to prove that she earned the 3 month's salary claimed.

As adverted to elsewhere in this Judgment the claimant admitted having voluntarily accepted and signed the 14 days fixed term close out contract dated 1st April 2025 which identified her job description, the salary and gratuity payable for 14 days.

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 reliefs

(i) Declaration

The claimant adduced no evidence of having been appointed to act in any position and neither the Memorandum of Claim nor the written witness statement made reference to any acting position and/or payment of acting allowance.

The claim lacked supportive evidence and it is dismissed.

(ii) Salary and gratuity

Puzzlingly, the claimant did not avail a copy of the fixed term contract she signed but filed the contract of one Mercy Adoyo Kosuri who had been given a 3 months fixed term close out contract by the respondent to persuade the court that she was also entitled to 3 months, which in the court's view was the respondent's discretion based on the responsibility of the employee and role in the close out.

The claimant is however, entitled to the salary and gratuity under the 14 days fixed term contract.

(iii) Certificate of service

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

The claimant is awarded costs at ½ 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

ORIGINAL