

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
CAUSE NO. E003 OF 2025

JAMES PETER MBOKO.....1ST CLAIMANT

BEATRICE WANJALA.....2ND CLAIMANT

VERSUS

THE SECRETARY GENERAL,

KUDHEIHA WORKERSRESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

JUDGMENT

I. INTRODUCTION

1. Through Momanyi, Manyoni & Co. Advocates, the claimants commenced this cause by way of a claim dated 16th December, 2024 seeking for the following reliefs –

- a) *Payment of the Decretal sum received vide Kisumu Employment and Labour Relations Court Cause No. 156 of 2013.*
- b) *Costs of this suit.*
- c) *Any other order the Honourable court may deem fit to grant.*

2. As it is the procedure, the claim was accompanied with verifying affidavits sworn by the claimants, the claimants’ witness statements, a list of documents and copies of the listed documents.

3. The respondent entered appearance through Michael Oyata, the respondent's industrial relations officer, and filed a response to the claim dated 17th February, 2025 seeking for the dismissal of the claim with costs for lack of merit.
4. On 17th March, 2025 the respondent filed a list of witnesses, accompanied with the written statement of Odoyo Genga (RW1), a list of documents and copies of the listed document.
5. The claimants' case came up in court for virtual hearing on 7th May 2025 when James Peter Mboko (CW1) testified and was cross-examined. Hearing resumed on 20th May 2025 when Beatrice Wanjala (CW2) testified and the claimant's case was closed.
6. The defence was heard virtually on 20th May 2025 when RW1 testified and the respondent's case was closed.
7. Counsel for the claimants and the respondent's representative addressed and summed up their respective client's case by way of written submissions. Mr. Orute for the claimants filed submissions dated on 2nd June 2025 while Mr. Oyata for the respondent filed submissions dated 16th June 2025.

II. THE CLAIMANTS' CASE

8. The claimants' case is expressed in the memorandum of claim, the oral and documentary evidence by the claimants, and the written submissions by their counsel.
9. In their claim, the claimants stated that they are registered members of the respondent and that in 2013 while they were

employees of Sinaga Girls' Secondary School they were unfairly terminated. It was pleaded that the respondent filed a claim on the claimants' behalf in *Kisumu ELRC Cause no. 156 of 2013* that was eventually determined in their favour on 18th September 2014. It was stated that CW1 was awarded Kshs510,510/= while CW2 was awarded Kshs314,100/=.

10. It is pleaded that the respondent failed to remit the decretal sums to the claimants despite receiving the same from Sinaga Girls' Secondary School.
11. The claimants seek the court's indulgence to compel the respondent to remit the said decretal sums.
12. In his virtual testimony in court, CW1 adopted his filed witness statement on record as his evidence-in-chief and stated that he is a bursar in Mumboha Secondary school. He conceded that he had no proof that the respondent had received the decretal sum from Sinaga Girls Secondary School. He stated that he had visited the respondent's office in 2023 but his efforts to get the property were futile.
13. CW2 testified that she is a farmer. She also conceded that she had no proof that the respondent received the decretal sum from the school. She stated that the respondent's offices in Kisumu are always closed and its office in Nairobi promised to pay but nothing was forthcoming. CW2 stated that the respondent was obligated to follow up on the payment from Sinaga Girls

secondary school after the judgment was delivered on 18th September 2014.

14. It is in the foregoing circumstances and facts that the court is urged to allow the claim and grant the reliefs as prayed for by the claimant.

III. THE RESPONDENT'S CASE

15. The respondent's case is contained in the response to claim, the oral and documentary evidence adduced through RW1, and the written submissions by its counsel.

16. In the response to the claim, it was pleaded that the claimants' cause at Kisumu was filed by the respondent on 20th June, 2011 and the judgement was delivered on 18th September 2014.

17. It was pleaded that the respondent did not receive the decretal sum from Sinaga Girls Secondary School and the claimants ought to have confirmed that fact from Sinaga Girls Secondary School before commencing this case.

18. RW1 testified that he was the respondent's assistant secretary general and that while judgment was entered in favour of the claimants, no monies were paid to the union. It was stated that the respondent's officer, Mr Mwani, who was handling the claimants' suit had fallen ill and could not follow up on the suit.

19. It is stated that the union filed execution proceedings but the status of the same is unknown. RW1 testified that the claimants are aware that no monies were paid to the respondent and the union has been following up without success.

IV.SUBMISSIONS

20. The claimants' counsel submitted on three issues – ***Whether the respondent discharged its duty in ensuring the claimants received the awarded sum; Whether the explanation by the respondent absolves it from liability; and, Whether the respondent is liable for negligence and breach of duty of care owed to the claimants.***
21. On the first issue, counsel submitted that the respondent having filed suit on behalf of the claimants had the responsibility to see that the matter was finalised to its conclusion. It is submitted that the respondent owed a fiduciary duty and a duty of care to the claimants but failed to so act.
22. It is submitted that the respondent's wilful neglect and gross dereliction of duty led to the failure to inform the claimants of the progress in their case and failure by the union to follow up on the payment of the decretal sum.
23. On the third issue, it is submitted that the decretal sums were not paid to the claimants and this has denied them the fruit of a successful litigation which amounts to unfair labour practice under ***Article 41 of the Constitution.***
24. The court is urged to find the respondent in breach of duty, order the respondent to pay the decretal sums of Kshs 510,510/= and Kshs 314,000/= to the claimants with interest, award the claimants damages for loss of use of the funds and the emotional distress occasioned by the respondent's inaction.

25. On the other hand, the respondent's representative identified the following issues for determination – ***Whether the respondent discharged its duty in ensuring the claimants received the awarded sum; Whether the explanation by the respondent absolves it from liability; and, Whether the respondent is liable for negligence and breach of duty of care owed to the claimants.***
26. On the first issue, it is submitted that the respondent on behalf of the claimant filed ***Kisumu ELRC Cause No. 156 of 2013*** and after the judgement was delivered in their favour the respondent's officer Mr. Mwani made several attempts to have the decretal sums paid but he fell ill midway.
27. On the second issue, it is submitted that the respondents made efforts to trace the physical records of the ***Kisumu ELRC Cause No. 156 of 2013*** but could not find them as the filing system then was purely physical which in turn made it difficult to execute the judgment. It is submitted that, however, after learning of the present suit the respondent reached out to Sinaga Secondary school who promised to provide a solution by 30th June 2025.
28. On the third issue, the respondent's representative submitted that the respondent assumed the claimants had been paid the decretal sum due to their prolonged silence and the lack of records further hindered the respondent from following up on the same.
29. It is submitted that the claimants acknowledged that no decretal sums were paid to the respondent and the claimants had not made

a demand to the respondent to pay the same. It is submitted that the claimants could not be located by the union for them to be updated on the matter.

30. The court is urged to find that the union is competent and accord it time to pursue the management of Sinaga Girls Secondary School to pay the decretal sum.

V. ISSUES FOR DETERMINATION

31. The court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions filed by both sides. The following issues commend themselves to the court for determination –

a) Whether the decretal sum was paid to the respondent?

b) What are the appropriate orders for this court to make in regard to the above issue and on costs?

VI. DECRETAL SUM

32. The claimants' case is that the respondent filed ***Kisumu ELRC Cause no. 156 of 2013*** that was eventually determined in the favour of the claimants on 18th September 2014. In that judgment, CW1 was awarded Kshs510,510/- while CW2 was awarded Kshs314,100/=. The claimants pleaded that the decretal sums were paid to the respondent who allegedly failed to remit the same to them.

33. In their testimony in court, the claimants conceded that they had

no proof that the respondent had received any monies from Sinaga Girls' secondary school. RW1 likewise confirmed that no monies were paid, as the union's representative/officer who handled the matter, Mr. Mwani, had fallen ill and misplaced the court documents pertaining to the claimants' said suit and judgment. RW1 conceded that the union had not followed up on the execution of the judgement and the follow-up only commenced after directions from the court.

34. It is trite law that he who alleges must prove the allegations made as required by the provisions of **Sections 107, 108 and 109 of the Evidence Act.**

35. The court has analysed the claimants' evidence and finds and holds that no evidence was adduced to prove that the respondent received the decretal sum. The claimants' suit is based on an apprehension that the decretal sums could have been paid and not released. The respondent conceded that they did not follow up on the decretal sums.

36. The claimants' prayer before the court is for an order for the respondent to release the funds paid as decretal sums. However, there is no evidence to prove that the funds were paid and received by the respondent. The claimants did not seek confirmation from Sinaga Girls Secondary School on whether the decretal sum was paid to the respondent before approaching this court.

37. The claimants availed no witness or evidence to prove that the

respondent had received the decretal sum. The claimants in their submission urge the court to find that the respondent failed in their duty to help the claimants as their members on following up on the payment of their decretal sum.

38. While the respondent conceded that it did not follow up with Sinaga Girls Secondary school on the payment of the decretal sum, the claimants did not plead the respondent's negligence in their plaint but only raised the said issue in their submissions. parties are bound by their pleadings and the court cannot issue orders sought through submissions which are truly speaking not pleadings.

39. On the basis of the above, the court finds and holds that the claimants have not proved their case on a balance on a probabilities. The evidence if payment if the decretal sums to the respondent is lacking.

40. In the foregoing circumstances, the court finds the claimants' claim devoid of merit and the same is hereby dismissed with no orders as to costs.

41. The claimants are advised to use the cause that awarded to them and execute the decree in that cause.

VII. COSTS

42. No orders as to costs.

VIII. DISPOSAL/ORDERS

43. *This cause is dismissed for lack of merits.*

44. *Each party shall bear own costs.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 19TH DAY OF MARCH 2026.**

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DAVID NDERITU
JUDGE

ORIGINAL