



**Mwaro v Taita Taveta University (Cause E009 of 2025)  
[2026] KEELRC 1122 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1122 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT VOI  
CAUSE E009 OF 2025**

**M MBARÚ, J  
APRIL 30, 2026**

**BETWEEN**

**WILLIAM BAYA MWARO ..... CLAIMANT**

**AND**

**TAITA TAVETA UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is an adult male employed as a lecturer by the Respondent, earning Ksh. 174,925 per month. The Respondent is a public university established under the Universities Act.
2. On 1<sup>st</sup> August 2015, the Respondent employed the Claimant as a lecturer stationed at the Voi Campus. There was a written contract of employment, the human resource policy, and the Universities Act governing the employment relationship.
3. In 2016, the Claimant was awarded a 3-year PhD scholarship by the Kenyan-German Centre of Excellence for Mining, Environmental Engineering and Resource Management (CEMEREM) to pursue studies in Materials Science and Engineering at the Technical University of Freiberg, Germany. Following the award, the Respondent granted the Claimant study leave and required execution of a bonded service for a period of 3 years upon return, which the Claimant complied with.
4. The claim is that, due to academic and administrative challenges, the Claimant was unable to complete the PhD within the initially designated period and remained in Germany for approximately 6 years while pursuing the study. During his stay in Germany, the Claimant communicated with the host institution, which declined to extend his study leave.
5. The claim is that the Claimant, acting in good faith, extended his study leave to complete his studies, though he ultimately did not finalise the PhD programme. While in Germany, the patient was diagnosed with high blood pressure, which adversely affected his kidneys and other organs. He returned home on 14 December 2022 without completing the PhD programme.



6. The claim is that immediately upon return, the Claimant sought medical treatment.
7. On 23 December 2022, the Claimant received an email and a show-cause notice from the Respondent, the Office of the Deputy Vice Chancellor (Administration, Finance and Planning), alleging absenteeism and requiring repayment of scholarship monies. The Claimant contacted Prof. Jonah Arap Too, who was surprised that he had returned and directed him to formally respond to the Notice to Show Cause and that the Respondent had closed for the December holiday until January 2023.
8. On 3 January 2023, the Claimant reported to work and completed a Staff Movement Form as required by the Respondents' policy procedures. On 14 January 2023, the Claimant submitted his written response to the Notice to Show Cause, explained his circumstances, and stated that he had returned to the country and was ready to resume duty.
9. Despite the response, the Claimant was not called for any disciplinary hearing or any other communication.
10. From January 2023, the Respondent stopped paying the Claimant his salary and benefits. The Claimant remained available to work but was not allocated any duties. He opted to relocate from Voi to his rural home in Kaloleni.
11. The claim is that the Claimant remained bonded by the Respondent at all material times. He was, however, denied his salary without justification. This was in violation of his rights to fair labour practices and fair administrative action, contrary to articles 41 and 47 of *the Constitution*.

The Claimant is claiming the following:

- a. A declaration that the stoppage of payment of salary and benefits from January 2023 is unlawful and unconstitutional.
  - b. An order compelling the Respondent to immediately reinstate the Claimant with payment of full salaries and benefits.
  - c. An order for payment of salary arrears and benefits from January 2023.
  - d. In order to compel the Respondent to deploy the employee to duty and restore all salary and benefits withheld since January 2023 or any other lawful arrangement, method to ensure the Claimant can perform his duties and receive remuneration.
  - e. General damages for violation of constitutional rights and unfair labour practices.
  - f. Costs of the suit.
12. The Claimant testified in support of his case. His case was that he was awarded a scholarship to study in Germany and bonded by the Respondent for 3 years. He, however, encountered challenges and was unable to complete his studies for 6 years. He returned home on 14 December 2022, reported to the Respondent on 22 December 2022, and filled the Staff Movement Form. He was not assigned duties and was instead issued a Notice to Show Cause for absenteeism. The Claimant has since responded, but was not called for a disciplinary hearing, yet his salary was stopped from January 2023.
  13. Upon cross-examination, the Claimant testified that he was bonded to stay in Germany for 3 years from 2016 but only returned in December 2021 after 6 years. He was awarded a PhD in CEMEREM but did not complete his studies. He had problems with one supervisor who discontinued support.



14. The Claimant testified that after failing to receive feedback from the Respondent upon response to the Notice to Show Cause, he decided to proceed to South Africa for studies. He did not inform or obtain authority from the Respondent. He did not find it necessary. He has since obtained a PhD in general engineering. This was not as bonded in Materials Science and Engineering. It is a general PhD in engineering.
15. The Claimant testified that during his stay in Germany, his study period was extended to June 2022. From June to December 2022, he had no formal extension of his study leave. Any request for extension was denied. Since he had invested in his studies, he opted to stay on and complete his studies, but was not able to complete. For this absence from duty, a notice to show cause was issued; he responded, but he was not called to a disciplinary hearing.

There was no response filed.

The Respondent did not call any witness.

### **Determination**

16. Both parties filed written submissions. These are analysed, and the issues for determination are whether there are constitutional or unlawful violations of fair labour practices; whether the claim should be paid salaries and benefits from January 2023; and who should pay costs.
17. The Claimant admitted in evidence that he was awarded a 3-year PhD scholarship by the Respondent in conjunction with the German Centre for Excellence for Mining, Environmental Engineering and Resource Management to pursue a PhD in Materials Science and Engineering at the Technical University of Freiberg, Germany. He was bonded for this purpose, with an undertaking to return and work for the Respondent for 3 years.  
  
The Claimant did not complete his studies in 3 years.
18. The study period was extended, and the last extension ended in June 2022.
19. The Claimant did not resume his employment with the Respondent after June 2022. He stayed on in Germany until 14 December 2022.
20. For the absence from June 2022, the Respondent issued the Claimant with a notice to show cause on 20 December 2022. The Claimant responded on 14 January 2023. His salary was stopped effective January 2023, which the Claimant asserts violates his rights and contravenes fair labour practices.
21. The Claimant also admitted that he chose to leave for South Africa to pursue a PhD in engineering. Since the Respondent had not summoned him to work, he did not find it necessary to seek permission, approval, or a travel request.
22. Under section 44(3) and (4) of the *Employment Act* (the Act), a party who fails to adhere to the terms and conditions of employment and particularly remains absent from duty without the permission or approval of the employer commits a serious breach of the employment contract and is in gross misconduct. Under section 41(2) of the Act, the employer should summon the employee for a disciplinary hearing in the presence of a fellow employee or trade union representative, as held in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR. And *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* [2014] KEELRC 905 (KLR).
23. In *Thomas Sila Nzivo v Bamburi Cement Limited* [2014] KEELRC 118 (KLR), the court emphasised that the employer is justified in summarily dismissing an employee who fails to attend work as directed.



24. In this case, the Claimant's study leave lapsed from June 2022. He did not resume work as required. The notice to show cause was properly issued. As a case of breach of constitutional rights and or violation of the right to fair labour practices does not arise.
25. The purpose for which the study leave was obtained, and the 3-year bond, were not respected by the Claimant. The lapse is the Claimant's. However, upon the notice to show cause on 20 December 2022, the Respondent failed to complete the process.
26. The Claimant remains in the employment of the Respondent despite the admitted gross misconduct of absenteeism from duty after June 2022.
27. The stoppage of payment of salary and benefits is lawful and permitted under section 19(1) (c) of the Act. The employer is allowed to effect a deduction for the days the employee is absent from work without good cause:
  - (c) An amount not exceeding one day's wages in respect of each working day for the whole of which the employee, without leave or other lawful cause, absents himself from the premises of the employer or other place proper and appointed for the performance of his work;
28. After June 2022, the Claimant did not report for duty until 3 January 2023, when he filled the Staff Movement Form; at that time, his absenteeism was apparent. The form could not sanitise the absence. The stoppage of salary and benefits thereof is justified.
29. Further, the Claimant's assertion that he left the country for South Africa to pursue further studies without the Respondent's permission and authorisation is a gross error. The Claimant, being regulated by the Respondent under his employment contract and bound by its policies, is a civil servant. Any travel out of the country should be sanctioned by the employer. Any absence from the shop floor, however justified, should have been with the employer's approval, the Respondent.
30. The admission of travel abroad to South Africa without the employer's permission compounded the Claimant's gross misconduct.
31. Despite the Respondent's failure to respond, the claims made and the evidence do not accord the Claimant good standing to justify the award of salary and benefits or damages for the alleged violation of his rights. Such claims must fail.
32. However, the Claimant remained employed by the Respondent until the disciplinary process commenced, with the Notice to Show Cause issued on 20 December 2022. Such a process should ordinarily be completed within a reasonable time, as held in *Juma v Telkom Kenya Limited & 2 others* [2025] KEELRC 2902 (KLR). Thus, keeping the Claimant on the suspension notice from 20 December 2022 to date, without addressing the Claimant for or against, constitutes a procedure unknown in law. Save for the gross misconduct of the Claimant's absenteeism from work and later travelling abroad without permission and authority as required, the Respondent should complete the Show Cause notice within the next 30 days, after which the Claimant will have good cause to claim as appropriate.
33. Accordingly, the claim is without merit and is hereby dismissed. Each party to bear its costs.

**DELIVERED IN OPEN COURT AT NAIROBI, THIS 30<sup>TH</sup> DAY OF APRIL 2026**

**M. MBARŪ**

**JUDGE**



In the presence of:

Court Assistant: Catherine and Omar

..... and

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