



**Oluoch v Egerton University & 2 others (Petition E003 of 2024)
[2025] KEELRC 595 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 595 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E003 OF 2024
J RIKA, J
FEBRUARY 28, 2025**

BETWEEN

WYCLIFFE ODIWUOR OLUOCH PETITIONER

AND

EGERTON UNIVERSITY 1ST RESPONDENT

THE VICE-CHANCELLOR EGERTON UNIVERSITY 2ND RESPONDENT

**THE DEPUTY-VICE CHANCELLOR [ADMINISTRATION FINANCE AND
PLANNING] EGERTON UNIVERSITY 3RD RESPONDENT**

RULING

1. The Petitioner successfully petitioned the Court, and was awarded a total sum of Kshs. 2,908,536, less statutory deductions, in a Judgment delivered on 18th day of September 2024.
2. The award was in form of general damages, for violation of the Petitioner’s constitutional rights under Article 41, and for constructive dismissal.
3. He has applied for review of the Judgment, on the ground that the Court adopted a gross monthly salary of Kshs. 113,567 in computation of compensation. This was the applicable, rate, at the time he was employed, way back on 15th April 2011. It is the rate captured in his letter of appointment, issued in the year 2011.
4. He exhibits his most recent pay slip for March 2022, establishing that his gross monthly salary, was Kshs. 235,243. Also exhibited, is his demand letter issued to the Respondents before filing of the Petition, indicating his most recent gross monthly salary, as Kshs. 235,243.
5. His position is that the Court ought to have used the most recent gross monthly salary, in its Judgment. He prays the Court to review the Judgment and apply the correct gross monthly salary.



6. The Application is founded on his Affidavit, sworn on 9th October 2024.
7. The Respondents oppose the Application, relying on the Affidavit of the 2nd Respondent, sworn on 28th October 2024. Their position is that the Petitioner did not exhibit his pay slip for March 2022, in his Petition. The pay slip introduced through the Application, is fresh evidence. It was not availed to the Court, at the trial. The demand letter issued by the Petitioner's Advocate, was not evidence of the Petitioner's last salary. The Respondents pray the Court to dismiss the Application with costs.
8. It was agreed by the Parties that the Application is considered on the strength of their Affidavits and Submissions. They confirmed the filing and exchange of their Submissions at the last mention before the Court, on 19th November 2024.

The Court Finds: -

9. The last gross monthly salary earned by the Petitioner, was known to the Respondents. It is something which ought not to be transformed into the subject of further argumentation, months after the Judgment was delivered.
10. It is obvious that the Judgment contains an error on the last monthly salary, applicable to the Petitioner. What was applied was the rate applicable on appointment, in the year 2011, 11 years before the year 2022. It is common knowledge to the Parties that the Petitioner's salary did not stand still, from 2011.
11. He perhaps omitted to supply his most recent pay slip to the Court through his Supporting Affidavit. The Court has not seen a copy of the March 2022 pay slip amongst his bundle of documents, filed with the Petition. The Court adopted the rate applicable in 2011, in the absence of the pay slip for the year 2022.
12. The pay slip however, is not exactly new evidence, that would disadvantage the Respondents in any way, if review is granted. Section 20 of the *Employment Act* requires the Employer to supply the Employee, an itemised written pay statement, at or before the time salary is paid. This is a statutory document, which is generated by the Employer, and which the Respondents had in their custody, at the time of the trial. It is not a new document unknown to either Party, at the time of the hearing. The Respondents are aware, that they did not issue the last pay slip to the Petitioner, in 2011. That the Petitioner omitted to exhibit it upon trial, should not have the unjust effect, of the Court declining to review its Judgment, once the correct gross monthly salary has been clarified by use of the correct itemised written pay statement.
13. Rule 74 of the E&LRC (Procedure) Rules 2024, enables the Court to review its decisions, not only on account of fresh evidence which was not within the knowledge of the Applicant at the time of the trial; but also, on account of mistakes or errors apparent on the face of the record; or where the decision requires clarification; or importantly, for any other sufficient reason. Any other sufficient reason, is determined through the discretion of the Court, and is interpreted as having similar weight as the other grounds.
14. The Judgment on record does not conform to Section 49(1)(c) of the *Employment Act*, having adopted a base rate of the salary earned by the Petitioner upon his appointment, 11 years ago, instead of the rate earned at the time of his dismissal. If all other grounds under Rule 74 of the E&LRC (Procedure) Rules 2024 do not justify review, the Court is persuaded that there is a sufficient reason to justify review.

It Is Ordered: -

- 15 Judgment delivered on 18th September 2024 is reviewed and varied as follows:



- I. The Petitioner is granted equivalent of 8 months' gross salary as compensation for unfair termination, at Kshs. 235,343 x 8 = Kshs. 1,881,944.
- II. The total awarded is corrected to Kshs. 3,881,944 subject to statutory deductions.

No order on the costs of the Application.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28TH DAY OF FEBRUARY 2025.

JAMES RIKA

JUDGE

