



**Wairigu & 6 others v Catholic University of Eastern Africa (Cause
550 of 2019) [2025] KEELRC 1015 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1015 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 550 OF 2019
MA ONYANGO, J
MARCH 28, 2025**

BETWEEN

**PETER MUIGAI WAIRIGU 1ST CLAIMANT
ALLAN OUMA OLOTCH 2ND CLAIMANT
BRIGIT OCHICHE OBARA 3RD CLAIMANT
PETER MWANGI KARIUKI 4TH CLAIMANT
SAMUEL MBURU NJUGUNA 5TH CLAIMANT
MICHAEL ONYANGO NYOTUMBA 6TH CLAIMANT
MARY MWENDE MUTUNE 7TH CLAIMANT**

AND

CATHOLIC UNIVERSITY OF EASTERN AFRICA RESPONDENT

JUDGMENT

1. The Claimants herein filed this suit against their employer Catholic University of Eastern Africa, the Respondent herein in which they averred that their employment had been terminated unfairly on grounds of redundancy. In their Statement of Claim dated 16th August, 2019 they prayed for the following remedies against the Respondent:
 - a. Declaration that the claimants were discriminated against and suffered unlawful redundancy
 - b. Damages for wrongful and unfair treatment
 - c. Damages for discrimination.
 - d. Compensation for constructive dismissal



- e. Payment of all the lawful terminal dues set up in Schedule A.
 - f. Release of the Claimants' respective Certificates of Service.
 - g. Cost of this suit with interest thereon.
2. By an application by way of Notice of Motion dated 16th June, 2020 the Respondent prayed for orders that the suit be declared sub judice to cause No. 805 of 2017 filed by the Kenya Private Universities Workers Union against the Respondent on the same issue in dispute in this suit.
 3. After hearing the parties, the court made the following findings and orders:
 21. I have considered the averments of the Parties herein. Indeed, this Court has a duty to consider if the Suit herein is similar to Cause No. 805/2017 in order to arrive at the finding that this Cause is sub-judice.
 22. Cause No. 805/2017 was filed by the Kenya Private Universities Workers Union. The issue in dispute in Cause No. 805/2017 is refusal by the Respondents to allow the Claimants herein to access both her members and potential members, deductions and remittance of union dues and victimization of her members on account of Trade Union affiliation activities.
 23. The Claimants also contend victimization of her members vide unlawful termination of employment contracts of some of her members vide unlawful, unfair, unprocedural and unconstitutional redundancies.
 24. The Grievants mentioned in Cause No. 805/2017 include Mary Mwendu Mutune, Brigit Ochiche Obara, Peter Muigai Wairigu, Janet Mongina Otoigo, Mercy Wanjala Mwasi, Antony Njoroge, Loice Kariuko Njoka, Peter Mwangi Kariuki, Lilian Achieng Osaso, Florence Wakeya, Martin Kinyenje, Pius Mayenga, Duncan Waluchio and Allan Olotch.
 25. Apparently, all these Grievants in Cause No. 805/2017 are Claimants in Cause No. 550/2019 except Samuel Mburu Njuguna and Michael Nyotumba.
 26. The issues in this Claim as in Cause No. 805/2017 relates to redundancies too. In the circumstances, issue of redundancies is a matter which is sub judice in both matters.
 27. The only point of divergence relates to access to Claimant's members and deduction and remittance of union dues which has not been included in Cause No.550/2019. In the circumstances, the only cure in the matter is either to amend the Claim and exclude the Claimants in Cause No.550/2019 or consolidate the 2 Causes which is dependent on counsels on record and the union.
 28. In the circumstances, I agree that Cause No. 550/2019 is sub-judice to 805/2017. I will give the Parties 30 days to consider the necessary amendments or consolidation of the two Parties and mention the matter before the Principal Judge for further directions.
 4. On 10th February, 2021 when the parties appeared before me and after being addressed by counsel, I directed as follows:

This matter has already been determined in the ruling delivered on 11/11/2020 by my sister Wasilwa J. Should parties have any agreement, they should approach the court. As for now the suit is confirmed to be sub-judices.
 5. Judgment in cause No. 805 of 2017 was delivered on 25th April, 2024. The court found as follows:



48. From the analysis above I find the allegation of discrimination not proved by the Claimant. I am satisfied from the evidence on record that the redundancy carried out by the Respondent was for genuine and valid reasons and the Respondent complied with the procedure set out in section 40(1) of the *Employment Act*. I am further satisfied from the evidence on record that the Respondent paid all the employees declared redundant their rightful terminal dues except of Janet Mongina Otoigo and Duncan Muroso Waluchio who were not paid salary for November, 2017 being Ksh.28,243.00 and Ksh. 47,266.00 respectively, which the Respondent admitted and offered to pay.
6. After delivery of Judgment it was noted that the Claims for Brigit Ochiche Obara, 3rd Claimant; Samuel Mburu Njuguna, 5th Claimant and Michael Onyango Nyotumba, 6th Claimant herein were not included in cause No. 805 of 2017. It was therefore agreed that their claims be addressed separately in this suit. The judgment herein is therefore in respect to the Claims by the three Claimants only, the claims by the rest of the Claimants having already been addressed in the judgment in Cause No. 805 of 2017.
7. The claims of the 3 Claimants are as follows:
- a. Brigit Ochiche Obara



a	3 months Gross salary Notice Pay 3xKsh.100,413/ =)	Ksh.301,239.00
b	Unpaid salary (November 2017)	Ksh.1100,413.00
c	53 days of leave earned and not utilized (53 days)	Ksh.177,396.30
d	Outstanding Salary Increment (2 years & 5 months)	Ksh.56,920.00
e	Severance pay (15 days per year for 10 years)	Ksh. 502,065.00
f	Deducted and unremitted Loan REPAYMENT (FROM Feb 2017 to Nov. 2017)	Ksh. 301,671.00
g	Deducted and unremitted deposits & IRF contribution February to October, 2017	Ksh. 4,950.00
h	Interest penalty due to late remittance December, 2015 to October, 2017	Ksh. 100,557.00
i	Waumini Sacco Dividend retained due to non- remittance (year 2016)	Ksh. 59,019.39
j	Waumini Sacco Dividend retained due to non- remittance (year 2017)	Ksh. 58,061.29
k	Waumini Sacco Dividend retained due to non- remittance (year 2018)	Ksh. 42,469.36
l	12 months salary compensation	Ksh. 1,204,956.00
	Total	Ksh.2,909,717.34



b. Samuel Mburu Njuguna

a.	Unpaid salary (November 2017)	Ksh.53,761.00
b.	1 month's salary in lieu of notice (Ksh.53,761)	Ksh.53,761.00
c.	Transfer Allowance (3 times) upto 2017	Ksh.87,000.00
d.	Responsibility Allowance upto 2017	Ksh.450,000.00
e.	Risk allowance upto 2017	Ksh.600,000.00
f.	Leave allowance accrued for (36 days 24x53,761)	Ksh.80,641.50
g.	Severance pay – 10 years	Ksh.365,939.00
h.	12 months salary compensation	Ksh.644,052.00
	Total	Ksh.2,335,154.50

c. Michael Onyango Nyotumba



a.	Severance pay 6 years	Ksh.218,995.00
b.	1 month in lieu of notice Gross salary pay	Ksh.62,570.00
c.	Procurement committee members Honararia (net)	Ksh.50,000.00
d.	Transfer allowance (Ksh.15000x2) upto 2017 Accrued/outstanding	Ksh.30,000.00
e.	Per diems (Ksh.2,000x7x2)	Kshs.28,000.00
f.	Internal Quality Auditor payment (Ksh.5000x3)	Kshs.15,000.00
g.	Waumini Sacco outstanding loan balance pegged on CUEA Salary	Ksh.1,150,009.84
h.	Unpaid Salary (November,2017)	Kshs.62,570.00
i.	Accrued 63 leave days	Kshs.164,246.25
j.	12 months salary compensation	Kshs.750,840.00
k.	Total	Ksh.2,532,231.09

8. According to the letter of redundancy the Claimants were paid the following:

Brigit Ochiche Obara

- a. Outstanding salary increment
(2 years & 5 months) Kshs. 56,920.00
 - b. Leave earned and not utilized Kshs. 173,440.64
 - c. Severance pay Kshs. 247,239.01
 - d. October, 2017 salary Kshs. 100,413.00
 - e. Three (3) months' Salary in lieu of Notice Kshs. 301,239.00
- Total Kshs. 879,251.65

9. The evidence on record in respect of Brigit shows that she was paid salary for October AND November, 2017 together with pay in lieu of leave days and severance pay.



10. As held in the judgment in Cause 805 the Claimant is not entitled to compensation. She did not adduce any evidence of deductions made and not remitted in by the Respondent.
11. Samuel Mburu Njuguna was paid:
- Outstanding salary
 - Increment (2 years & 5 months) -Ksh.23,206.00
 - Leave earned and not utilized -Kshs.80,641.50
 - Severance pay -Ksh.164,922.25
 - October 2017 Salary - Ksh.53,761.00
 - November 2017 Salary -Kshs. 53,761.00
 - Ksh.879,251.65
12. Samuel did not adduce any evidence in support of items (c), (d) and (e) of his claim. He is not entitled to compensation as his redundancy was not unfair.
13. Michael Onyango Nyotumba was paid:
- Outstanding salary
 - Increment (2 years & 5 months) -Ksh.30,176.00
 - Leave earned and not utilized -Kshs.227,527.27
 - Severance pay -Ksh.132,014.43
 - October 2017 Salary - Ksh.62,570.00
 - November 2017 Salary -Kshs. 62,570.00
 - Total -Ksh.514,857.70
14. Michael did not adduce evidence in support of his claims d to g. I have however noted that he was supposed to be paid honoraria for End of Financial Year Procurement Committee which the Respondent did not adduce evidence to show that the same was paid.
15. From the foregoing I find that the claims by Brigid Ochiche Obara and Samuel Mburu Njuguna have not been proved. I further find that Michael Onyango Nyotumba proved only the claim in respect of honorarium of Kshs. 50,000.
16. I accordingly dismiss the claims for Brigid Ochiche Obara and Samuel Mburu Njuguna and enter judgment for Michael Onyango Nyotumba in the sum of Kshs. 50,000.
17. In view of the decision of this court in cause No. 805 of 2017 to the effect that the redundancy was lawful and carried out in accordance with fair procedure as provided in the *Employment Act* and further that this suit was filed when there was another pending suit in respect of the subject matter, there shall be no orders for costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 28TH DAY OF MARCH 2025

MAUREEN ONYANGO

JUDGE

