



**Murila v Presbyterian Church Hospital & another (Cause E1695 of 2016)
[2025] KEELRC 1127 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1127 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1695 OF 2016
DKN MARETE, J
MARCH 26, 2025**

BETWEEN

JOHNSON LISAMULA MURILA CLAIMANT

AND

PRESBYTERIAN CHURCH HOSPITAL 1ST RESPONDENT

**REGISTERED TRUSTEES OF THE PRESBYTERIAN CHURCH OF EAST
AFRICA 2ND RESPONDENT**

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated 5th September, 2016. It does not disclose any issue in dispute on its face.
2. The actual genesis of this claim was by a Plaint dated 14th December, 2010 filed in Nairobi Chief Magistrate’s Civil Case No. 7973 of 2010 by the Claimant against PCEA Kikuyu Hospital and Presbyterian Church of East Africa (PCEA Church.) The Claim was later amended vide the Amended Plaint dated 9th February 2011.
3. Subsequently, in a ruling delivered on 2nd March, 2012 the court struck out the case against PCEA Church and granted the Claimant leave to join the Presbyterian Church Hospital, the 1st Respondent as a Defendant in the suit and further permitted the Claimant to consider pursuing his claim in the Industrial court (now the Employment and Labour Relation Court.)
4. The Respondent opened his various defences by a Defence dated 26th January, 2011 and follow it up with another dated 9th March, 2011. All this culminated in the penultimate Response to Memorandum of Claim Dated 5th September, 2016. This is dated 30th October, 2023 by which they deny the claim and prays that the same be dismissed with costs.



5. For purposes of determination of this cause, this court shall rely on the last versions of the parties' pleadings, that is the Memorandum of Claim dated 5th September, 2016 and its Defence dated 30th October, 2023.
6. The Claimant's case is that the 1st Respondent is a medical institution situated in Kikuyu Town and also known as PCEA Kikuyu Hospital. The 2nd Respondent are the Registered Trustee of the Presbyterian Church of East Africa pursuant to the Trustee (Perpetual Succession) Act who are the owners of the 1st Respondent.
7. The Claimant's further case is that the Respondents has his employers assumed various rubrics such as PCEA Kikuyu Hospital, PCEA Kikuyu Orthopaedic Rehabilitation Centre and the Presbyterian Church Hospital. This is as follows;

Since the inception of the suit, the Respondents had been unwilling to disclose the Claimant's real employer thus necessitating the various amendments to the parties before the Court. The Claimant asserts that the Respondents as his employers assumed various rubrics such as PCEA Kikuyu Hospital, PCEA Kikuyu Orthopaedic Rehabilitation Centre and the Presbyterian Church Hospital. The Respondents should not be allowed to rely on this treachery to deny the Claimant justice. Relevantly, in the case of *Laban Awando Kanyo v Susan Larsen Va Utamaduni Craft Centre* [2013] eKLR, the Hon. Mr. Justice Rika held as follows:

"24. It would be impossible for the Claimant to know with exactitude which legal entity to bring to this Court, for purposes of correcting what he believes to be an employment wrong. It would be utterly foolish of the Court to find that the wrong Respondent has been sued. This Court has in the past suggested that the doctrine of legal separateness is of limited utility in employment and labour relations, where employers frequently devise multi-layered legal and business entities, all with the objective of avoiding regulatory burdens such as labour standards and taxation."

8. The Claimant's other case is that on or about 1992, he was employed by the Respondents, jointly and severally as an Orthopaedic Surgeon at the Respondent's Orthopaedic Rehabilitation Centre located at the PCEA, Kikuyu Hospital. By the year 2005, he had risen to the position of Director of Clinical Services in charge of the Centre.
9. The Claimant's further case is that in consideration of the services rendered to the hospital and the centre the Respondents paid him salary as agreed save that on or about 1988, the Respondent received support on payment for the Wilson Rehabilitation Foundation based in Tennessee in the United States of America (USA). This was an arrangement for contributing to his pay as long as he remained in the employ of the Respondent.
10. The Claimant's other case is that it was an express term and or implied term of the claimant would be retained in employment as long as the foundation was ready, willing and able to pay the salary and unless the employment was otherwise lawfully terminated.
11. The Claimant further avers that on or about 18th August 2005, in breach of the Claimant's contract of employment and in violation of the rules of natural justice, the Respondents sent the Claimant on three months compulsory leave with effect from 22nd August 2005 on the grounds that the Claimant's leave for the years 2004 and 2005 was due, but gave no other reason for that action. The leave due to the Claimant at this time was however only seven weeks which was due to end on 11th October 2005.



12. The Claimant's other case is that the Respondents were in breach of the employment agreement it had entered into with the Claimant as they compelled the Claimant to proceed on three months leave without any or any good lawful and or justifiable reason or excuse thereby terminating his employment without notice. In the circumstances, the Foundation was unable to contribute to the Claimant's salary due from the Respondents.
13. He claims thus;
- a. The Claimant's unpaid salaries and allowances for the period between 1st January 11th October 2005.....Kshs.927,027.00
 - b. One Months salary (from 11th October to 10th November 2005).....Ksh.194.856.25
 - c. Payment in lieu of notice (for 3 months)Kshs.554.493.00
- TOTALKshs.1,706.376.25
14. He prays thus;
- a. A declaration that the termination of the Claimant's employment was unlawful.
 - b. The amount of Kshs.1,706,376.25.
 - c. Interest on (b) at appropriate rates until payment in full.
 - d. Costs of the suit.
 - e. Any other relief this Honourable court may deem just.
15. The Respondent in Response Memorandum of Claim Dated 5th September, 2016 and dated 30th October, 2023a defence avers that the Claim fatally defective and should be struck out for the following reasons;
- a. The claim was filled outside the prescribed limitation period.
 - b. A similar claim, filed by the Claimant against, the 1st Respondent and subsequently amended to replace the 1st Respondent with Presbyterian Church of East Africa, was struck out on 2nd March, 2012.
 - c. The Respondents therefore contend that the court has no jurisdiction to entertain the claim.
16. The Respondent's other case is an admission of paragraph 3 of the claim but state that the 1st Respondent is not a legal entity capable of suing in the manner it has been sued herein.
17. The Respondent's further case and in answer to paragraphs 5 and 6 of the Memorandum of Claim, the Respondent pleads as follows;
- a. The 2nd Respondent employed the Claimant to work at Presbyterian Church Hospital as a Medical Director and Orthopaedic Surgeon up to the year 1998 only.
 - b. In or about the yea 1998, the Claimant entered into a new contract of employment with the Board of Wilson Rehabilitation Foundation, Maryville, Tennessee, United Stats of America.
 - c. The said Wilson Rehabilitation Foundation seconded the Claimant to work for the 2nd Respondent at Presbyterian Church Hospital in Kikuyu as his work station.



- d. The said Wilson Rehabilitation Foundation took over the Claimant's emoluments and offered him terms which included payment of not only his monthly salary but also the following other benefits:-
 - i. Health Insurance
 - ii. Life Insurance
 - iii. Study leave once every two years
 - iv. Annual leave
 - v. Retirement benefits
 - e. On 20th June, 2005, while the claimant was still on secondment to Presbyterian Church Hospital, the 2nd Respondent offered the Claimant employment as Director of Clinical Services but the Claimant declined the offer vide his letter dated June 2005.
 - f. After declining the 2nd Respondent's offer to employ him as Director of Clinic Services, the Claimant opted, on his own accord, to terminate his services.
18. The Respondent therefore denies termination of the Claimant's employment and posits that asking him to take his annual leave for the year 2004 and 2005 did not amount to termination, or at all. In the year 2005, the Claimant was not their employee but that of the board of Wilson Rehabilitation Foundation, Maryville, Tennessee who were responsible for payment of his terminal dues.
19. The matter came to variously until the 6th December, 2023 when it was heard *inter partes*. Here, the parties testified in reiteration of their respective cases.
20. The issues for determination therefore are;
1. Whether this court has jurisdiction to hear and determine this cause.
 2. Whether the termination of employment of claimant by the Respondent, was wrongful, unfair and unlawful.
 3. Whether the claimant is entitled to the relief sought.
 4. Who bears the costs of this cause.
21. The 1st issue for determination is whether this court has jurisdiction to hear and determine this cause. The claimant in his written submission dated 12th February 2024 tackles this matter by highlighting the long and circuitous history of this cause. It is his claim that vide an application dated and filed on 19th May, 2016 (Misc. Application No. 64 of 2016), he sought to have CMCC No. 7973 of 2010 transferred to this court. This application was allowed by Hon. Mr. Justice Abuodha J. N. on 26th May 2016.
22. The transferred suit acquired a new cause No. ELRC 1695 of 2016 where this court continued the same cause of action as was in CMCC 7973 of 2010. This court has pronounced itself on the issue of limitation vide the ruling delivered on 22nd December, 2017 and 23rd October, 2020 by Justices Aboudha and Radido respectively. It is therefore a non-issue at this stage.
23. The Respondent's take on this is that the issue of jurisdiction was initially raised in these proceedings and objection made thereby prompting the claimant to amend his plaint. The suit was struck out by the trial magistrate with an offer to inter alia enjoin the Presbyterian Church Hospital as a Defendant



in the suit. It is her further case that the remark of the lower court intimated that the suit had been filed in a court without jurisdiction.

24. In summation, the Respondent submits thus; The cause of action arose on 18th August, 2005 when the claimant was sent on compulsory leave. The *Employment Act* (Cap. 226, now repealed) applied at the time. This provided for a 6 years limitation period. The *Employment Act*, 2007 (which came to force on 2nd June, 2008) reduced the limitation period to 3 years. The original suit (CMCC 7973 of 2010) was filed within time but was struck out on 2nd March, 2012. The present claim was filed on 7th September, 2016 more than 11 years after the cause of action thus rendering it time barred.
25. The Respondent submits that the Claimant admitted the above facts in cross-examination and he also admitted the fact that he did not challenge the order striking out his suit. The order granting leave to the Claimant to amend his plaint and to enjoin Presbyterian Church Hospital was therefore a nullity because the suit had been struck out and there was no plaint in existence capable of being amended. The submission by the Claimant that the court only struck out the case against PCEA Church is not true because there was only one defendant in the suit and upon the suit against the defendant having been struck out, nothing else was left in the suit.
26. Further, the Respondent submits that CMCC No. 7973 of 2010 which the Claimant instituted against PCEA Kikuyu Hospital and later amended to bring on board Presbyterian Church of East Africa was struck out on 2nd March, 2012. Accordingly, the suit filed on 7th September, 2016 was filed out of time because;
 - a. The 6 years limitation period expired on or about 18th August, 2011.
 - b. CMCC No. 7973 of 2010 which the Claimant had filed on 15th December, 2010 had been filed against Presbyterian Church of East Africa and had been struck out
 - c. The Respondents named in this claim were sued for the first time on 7 September, 2016, more than eleven (11) years from the date of the alleged cause of action
 - d. Even order dated 26th May 2016 allowing the transfer of the struck out suit did not set aside the striking out order dated 2nd March, 2012. Further, this court's order allowing transfer of the struck out suit did not revive the suit or set aside the striking out order dated 2nd March, 2012.
 - e. And the order allowing the transfer of the lower court case to ELRC and filing of a memorandum of claim against the Respondents did not extend limitation period to allow filing claim against the Respondents out of time.
27. Under section 4(1) of the *Limitation of Actions Act* (Cap 22) a case of breach of contract must be filed within six years of the date of cause of action. As the claimant's cause of action arose in August, 2005, the limitation period expired in August, 2011. However, by the time of limitation, the claimant had filed CMCC 7973 of 2010 in December, 2010 within the scope of the limitation period. This was only struck out by the lower court.
28. The effect of striking out of CMCC 7973 of 2010 was of no effect to its status. This is because section 87(2) of the *Employment Act*, 2007 grants exclusive jurisdiction of matters employment and labour relation to this court. The Chief Magistrate's court lacked jurisdiction and therefore the striking out the case did not determine the claimant's right to sue. This is supported the authority of *Kenya Hotel Properties Ltd v Willesden Investments Ltd* [2007] eKLR where the court observed as follows;

“A suit filed in a court without jurisdiction is not a nullity per se. The proper course is to transfer it to the appropriate forum.”



29. This happened on the transfer of the matter to this court in 2016 thereby reviving the case and therefore short circuiting the defence of limitation. Again, as the suit was filed in the wrong court, the limitation clock was effectively paused until the employment and labour relation court took jurisdiction in 2016.
30. The Claimant's case on limitation of action comes out clear. The matter of the proceedings and the ruling of the trial magistrate allowing a transfer of the matter is augmented by the subsequent rulings of this court of 22nd September, 2017 and 23rd October, 2020 aforementioned. The issue of jurisdiction therefore does not arise in the circumstances and I find as such. This answers the 1st issue for determination.
31. The 2nd issue for determination is whether the termination of employment of claimant by the Respondent, was wrongful, unfair and unlawful. The claimant in his written submissions posits that he was gainfully employed by the Respondent as an Orthopaedic Surgeon on or about April, 1992 at the Respondent's Orthopaedic Rehabilitation Centre situate at PCEA Kikuyu Hospital. This was vide a contract dated 14th February, 1992. The claimant was subsequently offered and executed a new contract dated 1st March, 1995 on improved terms and this was executed on 28th February, 1996.
32. The claimant's further submission is that due to financial difficulties in paying a competitive salary, the Respondent received support from the Wilson Rehabilitation Foundation of Tennessee, United State of America from 1998. This took over the claimant salary at USD 1000 a month as a supplement and that any short fall would be the obligation of the Respondent in accordance with [Employment Act, 2007](#).
33. The Claimant's other submission is that sometimes in 2005, vide a letter dated 20th July, 2025, the Respondent offered the claimant the position of Director of Clinical Service Rehab on new terms of employment. This was despite the fact he had not raised issue with existing terms of employment. The claimant decline the offer and in a letter dated 24th July, 2005 explicitly asked the Respondent whether it would require his services as surgeon which was his primary term of employment.
34. The claimant's further submits that on or about 18th August, 2005, the Respondent sent him on three months compulsory leave when he did his balance of leave was only twenty-eight (28) days and due on 11th October, 2005. He complied and proceeded on leave.
35. The claimant, on resumption on duty was served with a letter dated 10th November, 2005 informing him that his services had been terminated on account of the Foundation terminating his secondment to the Respondent. This amounted to breach of his contract in that he has had never resigned from Respondent's employment in terms of his employment contract.
36. The payment of the claimant's salary by the Foundation was dependent on his continued employment with the Respondent. The Foundation had inferred that the unwarranted compulsory leave for three months by the Respondent to be a termination of the claimant's employment and therefore their inaction. The employment responsibilities to the claimant reverted to the respondent and this was communicated in his letters dated 19th October, 2005.
37. The Respondent denies the claim and submits that it is not merited. This is because it was the claimant failed to prove the claim to the required standard.
38. It is the Respondent's further submission that the claimant on cross-examination agrees with the letter dated 1st November, 2005 addressed to PCEA Kikuyu Hospital confirming the status of his employment as follows;



- a) That in June 1998, shortly after the Claimant had been employed by PCEA Kikuyu Hospital, the Claimant was approached by the Board of the Wilson Foundation and the Claimant entered into a new agreement with the Wilson Foundation as follows:
 - i) The Wilson Foundation took over the Claimant's employment by assuming the responsibility for paying the Claimant's salaries, health and term life insurance, annual leave and retirement benefits.
 - ii) The new contractual agreement entered into between the Claimant and the Wilson Foundation relieved the Respondents from their obligations under the contract of employment dated 1st March, 1996.
39. The fact that the Wilson Foundation became the new employer of the Claimant on June 1998 is fortified by the evidence on record confirming that the Foundation was responsible for not only paying the Claimant's salary but contract provided the Claimant with the following other benefits:-
- (a) Medical and term life insurance
 - (b) Paid annual leave of 28 days
 - (c) Study leave once every two years
 - (d) Retirement benefit
40. The Respondent accuses the claimant of not availing to court the contract he signed with the Wilson Foundation. He kept it to himself. It her submission that the fact that when the claimant entered into a new contract with the Foundation, his contract with the Respondent signed on 28th February, 1996 lapsed.
41. All this time, the Respondent has not demonstrated a case of the employment of the claimant by Wilson Rehabilitation Foundation. The issue of contract between the claimant and the Foundation is grey and remains not proven by way of evidence. The claimant's case of the Foundation being a supplement and rescue to the Respondents is more probable of the two.
42. It would appear that bad blood arose between the parties on or around the time of the Respondents writing the letter of the proposed promotion of the claimant to which he declined. He also raised issues as to whether the Respondent still required his services as surgeon to which there was no answer. Then followed the letter of taking up the claimant and the rest is history
43. The letter of 1st November, 2005 by the President of the Wilson Foundation to the Respondent tells it all. It was the culmination of this confusion. It inter alia comes out thus;
- The agreement between WRF and Mr. Murila included provision for a study leave every two years and an annual four weeks (28) days of personal leave time. The accrued leave time expired 11th October, 2005 onwards. Following this date Mr. Murila has been without work in his position as Medical Director and surgeon at the Orthopaedic centre, thus terminating his relationship with Wilson Foundation. Should he further be employed, this relationship and financial compensation would be solely with the Management Committee of the PCEA Kikuyu Hospital.
44. The letters of 18th August, 2005 sending the claimant to three months annual leave and the above sounded the death knell of the claimant employment. This was nailed by the Respondent's letter of 10th November, 2005 referring the claimant's to the Foundation for further reference and directions.



45. There is no doubt that the Respondents were responsible for the termination of the employment of the claimant. This was by unprocedural and unlawful interference with his employment contract. The call to take up the three months compulsory leave was breaking point of the camel's back. This and the final letter of reference of the claimant to the foundation amounted to unlawful termination of employment for the claimant. I therefore find a case of unlawful termination of employment and hold as such. This answers the 2nd issue for determination.
46. The 3rd issue for determination is whether the claimant is entitled to the relief sought. He is. Having won on a case of unlawful termination of employment, he becomes entitled to the relief sought.
47. I am therefore inclined to allow the claim and order relief as follows;
- (i) A declaration be and is hereby issued that the termination of the employment Claimant by the Respondent was wrongful, unfair and unlawful.
 - (ii) Salary for the period between 1st January, 2005 to 11th October, 2005 ...Kshs.927,027.00
 - (iii) Salary for 11th October, 2005 to 11th November, 2005Kshs.194,856.25
 - (iv) One (1) month's salary in lieu of noticeKshs.194,856.25
- Total of claimKshs.1.316,739.50
- (v) The costs of the claim shall be borne by the Respondent
 - (vi) Interest at the court rates from the date of this judgment till payment in full.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF MARCH 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

- . Dr. Fred Ojiabo instructed by Kaplan & Stratton for the Claimant.
- 2. Mr. Amuga instructed by Amuga & Company Advocates for the Respondents.

