



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Agutu v Moi University (Cause E031 of 2021)
[2025] KEELRC 839 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 839 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E031 OF 2021
MA ONYANGO, J
MARCH 13, 2025**

BETWEEN

OMOLO JOSEPH AGUTU CLAIMANT

AND

MOI UNIVERSITY RESPONDENT

JUDGMENT

1. The Respondent is a public university duly registered under the Universities Act, No. 42 of 2012. The Petitioner was at the time material to this suit an employee of the Respondent having been employed as an Assistant Lecturer in 2012 and promoted to Lecturer in August, 2015 on permanent and pensionable terms of employment. The Claimant worked for the Respondent until 6th October, 2018.
2. It is the averment of the Claimant that between 2014 and 2018 the Respondent made certain statutory deductions from the Claimant's salary which it unlawfully withheld as follows:
 - a. Year 2014 – Kes 345,367 (sum now stands at KES 633,648 which includes interest and penalties)
 - b. Year 2015 – Kes 268,320.15 (sum now stands at Kes 457,432 which includes interest and penalties)
 - c. Year 2016-Kes 365,048.99 (sum now stands at Kes 572,089 which includes interest and penalties)
3. The Claimant further avers that as a condition of his employment he was enrolled as a member of the Respondent's Staff Pension Scheme known as Moi University Pension Scheme from to which he mandatorily contributed 7.5% of his gross monthly salary per month with the Respondent contributing 15% of his gross monthly salary, which at the time of leaving service was Kshs. 8166.15



- and 16332.30 respectively from the Claimant and the Respondent. It is the Claimant's case that the Respondent failed to remit the said sums to the Pension Scheme between 2012 and 2018 despite making deductions in respect thereof from his salary.
4. The Claimant avers that by deducting and failing to remit the pension deductions to the Pension Scheme the Respondent unlawfully withheld Kshs. 401,153.90 being the principal sum and further denied the Claimant the right to earn interest from the Pension Scheme in relation to the withheld amount.
 5. The Claimant avers that the unlawful withholding and failure to remit the funds deducted from the Claimant's salary by the Respondent adversely affected the Claimant's ability to earn a livelihood as an advocate and or consultant as he is not able to secure tax compliance certificate from KRA.
 6. In the Memorandum of Claim dated 1st October, 2021 the Claimant seeks the following remedies from the Respondent:
 - a. General Damages.
 - b. An order directing the Respondent to immediately remit the sum of Ksh 401,153.90 together with interests at court rates from January, 2018 to the time of payment to Moi University Pension Scheme.
 - c. An order directing the Respondent to immediately remit to the Kenya Revenue Authority the sum of Kes 2,770,083 together with any additional penalties and interests at the time payment.
 - d. Costs of this suit.
 7. The Respondent filed a Response to Claim dated 9th March, 2022 in which it denies that it made deductions of Income Tax PAYE and withheld the same as alleged in the Memorandum of Claim.
 8. With respect to the deduction and remittance of pension contributions the Respondent states that the matter is universal and affected all the Respondent's employees. That the Respondent through its Management and the Unions representatives including the Claimant's Union are addressing the issue. That it held discussions with the Trustees of the Scheme and agreed on a Remedial Plan which was signed in February, 2020.
 9. The Respondent further states that the Remedial Plan was discussed with the Retirement Benefits Authority (RBA) which proposed certain amendments to include proposals made by RBA.
 10. The Respondent avers that there is a case filed by the Universities Academic Staff Union (UASU) (Moi University Chapter), Universities Non-Teaching Staff Union (KUSU) (Moi University Chapter), and KUDHEIHA (Moi University Chapter), which represent its staff among them the Claimant pending before court which was referred to the County Labour Officer Uasin Gishu for conciliation and which the Claimant is aware of being ELRC Petition No. E016 of 2021.
 11. Together with the Response the Respondent filed a witness statement of CPA (K) George K. Aduda to which was attached bank application for transfer forms for income tax staff deductions from the Respondent's account No. 10210279XXXXXX to Central Bank of Kenya account No. 10000XXXXXX Beneficiary Name Income Tax PAYE Account being Staff Deductions for January, 2014 to December, 2018.
 12. The Respondent further attached a document titled "Moi University Pension Scheme Remedial Plan" signed by Moi University represented by Prof. Isaac S. Kosgey and Moi University Pension Scheme represented by Prof. Paul O Ayuo dated 15th November, 2021. In the document it is agreed that



Moi University will start remitting the employees' contribution amounting to Kshs. 11,679,236.75 as at November, 2021 from January, 2022 and that Moi University will start remitting employer's contribution of Kshs. 23,333,605.50 as at November, 2021 to be remitted as from July, 2022.

13. Directions were given that the suit be disposed of by way of written submissions. On 7th February, 2024 the Claimant informed the court that he had filed submissions. The said submissions were however not in the court record at the time of writing this judgment.
14. The Respondent was also given time to file submissions and promised to do so but did not. The efforts by the court registry staff to obtain the submissions from the parties have not been successful.

Determination

15. Having considered the pleadings on record, the issues arising for determination are whether the Respondent deducted and failed to remit income tax and pension contributions for both employer and employee in respect of the Claimant and if the Claimant is entitled to the prayers sought in his Memorandum of Claim.
16. As pointed out above, the Respondent filed income tax remittance forms evidencing that it remitted all income tax for its staff to KRA from its account No. 010210279XXXXX at National Bank of Kenya Eldoret Branch for the period January, 2014 to December, 2018.
17. The remittances were made every month to Central Bank Account No. 10000XXXXX. The Account is Income Tax PAYE Account and the purpose of payment is stated to be "Staff Deductions". Cheque numbers used for the remittances are indicated on the forms.
18. From the evidence I am satisfied that the Respondent made all remittances for its staff on account of PAYE to Central Bank of Kenya for every month from January 2014 to December, 2018, which period covers the period for which the Claimant claims nonpayment of the same.
19. With respect to remittance of pension deductions the Respondent submitted agreements made with both the trade unions representing staff of the Respondent and the Pension Scheme managers for arrangements to remit the pensions for all the staff, including the Claimant. The same were approved by RBA.
20. The court further notes that the claim for pension was also made on behalf of the Claimant and all other staff of the Respondent in Petition No. E016 of 2021 filed on 28th October, 2021. Judgment in the said petition was delivered on 19th December, 2024 in favour of the Respondents who were Universities Academic Staff Union (UASU) Moi University Chapter, Universities Non-Teaching Staff Union (KUSU) (Moi University Chapter) and KUDHEIHA (Moi University Chapter). The Petitioner in the suit was the Moi University, the Respondent herein.
21. In the cross petition in Petition E016 of 2021, the Petitioner (Moi University) who is the Respondent herein was accused of unfair labour practices particularized as follows:
 - a. The Petitioner has failed to remit third party deductions despite having deducted the same from the Respondents' members.
 - b. The Petitioner has failed to remit deductions due to the Welfare Groups despite having deducted the same from the Respondents' members.
 - c. The Petitioner has failed to remit the employee pension deductions despite having deducted from the Respondents' members.



- d. The Petitioner has failed to remit the premiums for the Group Life Cover and the Medical Cover procured for the benefit of the Respondents' members as envisaged under the respective Collective Bargaining Agreements.
 - e. The Petitioner has failed to remit union dues to the Respondents despite having deducted the same from the Respondent's members.
 - f. The Petitioner has resorted to intimidation and victimization of the Respondents' leaders in its bid to frustrate union activities within the university.
 - g. The Petitioner has failed to pay Service Gratuity to the 1st Respondent's members for several years.
 - h. The Petitioner amended/ revised the statutes of the University without the participation of the Respondents and their members.
 - i. The Petitioner proceeded to operationalize the revised statutes without the mandatory gazettelement.
 - j. The Petitioner has excluded the Respondents in the University decision-making organs thereby locking them out of the decision-making process within the University.
 - k. The Petitioner has failed to sign and implement the 2013/2017 Supplementary Collective Bargaining Agreement despite having been negotiated and agreed upon.
 - l. The Petitioner has failed to enter into negotiations with the Respondents with respect to the 2017/2021 and 2021/2025 Supplementary Collective Bargaining Agreements.
 - m. The Petitioner has failed to develop a Staff Promotion Criteria in consultation with the Respondents.
 - n. The Petitioner has failed to promote deserving members of staff.
22. The issue of pensions for all university staff including the Claimant herein which were items (a) and (c) in the case herein are therefore res judicata having already been the subject of Petition No. E016 Of 2921 which has been heard and determined.
23. For the foregoing reasons, the suit herein fails and is hereby dismissed. Each party shall bear its costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 14TH DAY OF MARCH 2025

MAUREEN ONYANGO

JUDGE

